FEDERAL REGISTER

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Pages 10829–10899

THE UNIVERSITY OF MICHIGAN

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MAIN READING ROOM

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Agricultural Stabilization and Conservation Service
Agriculture Department
Atomic Energy Commission
Civil Aeronautics Board
Consumer and Marketing Service
Customs Bureau
Economic Development Administration
Federal Aviation Administration
Federal Communications Commission
Federal Crop Insurance Corporation
Federal Maritime Commission
Federal Reserve System
Federal Trade Commission
Fish and Wildlife Service
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Interstate Commerce Commission
Land Management Bureau
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Securities and Exchange Commission
Veterans Administration

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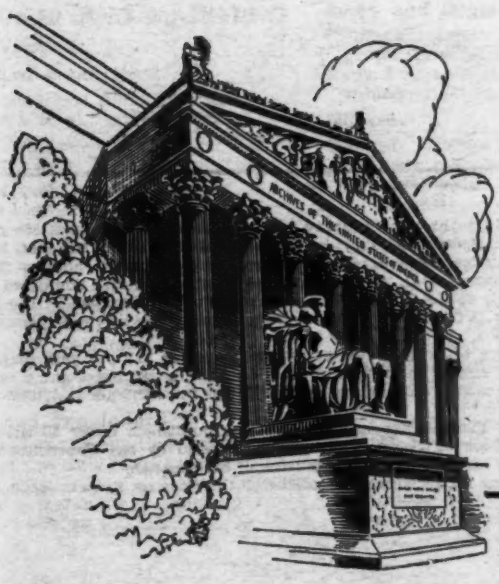

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Subtitle A—Office of the Secretary of Agriculture

[Import Reg. 1, Rev. 3; Amdt. 1]

PART 6—IMPORT QUOTAS AND FEES

Subpart—Section 22 Import Quotas

LICENSES FOR IMPORTATION OF AMERICAN-TYPE CHEESE, OTHER THAN CHEDDAR

Presidential Proclamation 3790, dated June 30, 1967, amended the provisions proclaimed by the President pursuant to section 22 of the Agricultural Adjustment Act by placing a limitation on the quantity of American-type cheese, other than Cheddar, which may be imported in a quota year and by increasing the quantity of Cheddar cheese which may be imported in a quota year. The beginning of the quota year also was changed from July 1 to January 1 and provision was made for the issuance of licenses on a semiannual rather than on a 4-month basis. Inasmuch as licenses to import commodities during the quota period beginning July 1, 1967, have been issued under the provisions of Import Regulation 1, Revision 3, heretofore in effect, the following § 6.32 is added to Import Regulation 1, Revision 3, to provide for the issuance of licenses for the importation of American-type cheese, other than Cheddar, and the increased quantity of Cheddar cheese during the period July 1, 1967, through December 31, 1967:

§ 6.32 Licenses for the importation of American-type cheese, other than Cheddar, and increased quantity of Cheddar cheese during the period July 1, 1967, through December 31, 1967.

(a) Country quotas: (1) American-type cheese, other than Cheddar: The 3,048,300 pound quota for American-type cheese, other than Cheddar, for the period July 1, 1967, through December 31, 1967, is allocated among the countries of origin as follows: New Zealand, 1,680,000 pounds; Australia, 840,000 pounds; Ireland, 280,000 pounds; and Sweden, 62,500 pounds; and specified other countries (Austria, Belgium, Bulgaria, Canada, Denmark, Israel, Italy, Netherlands, Portugal, Switzerland, United Kingdom, and West Germany), 185,800 pounds.

(2) Cheddar cheese: The quantity of 3,016,200 pounds by which the quota for Cheddar cheese subject to license was increased for the period July 1, 1967, through December 31, 1967 is allocated among countries of origin as follows: New Zealand, 1,680,000 pounds; Australia, 840,000 pounds; Ireland, 280,000 pounds; Sweden, 62,500 pounds; and specified other countries (Austria, Belgium, Bulgaria, Denmark, Israel, Italy, Netherlands, Portugal, Switzerland, United Kingdom, West Germany), 153,700 pounds.

(b) New business quota share: (1) American-type cheese, other than Cheddar: For new business quota shares of not to exceed 10,000 pounds per share for the period July 1, 1967, through December 31, 1967, there are set aside 762,075 pounds of the quota for American-type cheese, other than Cheddar, for the period July 1, 1967, through December 31, 1967, provided that not more than 25 percent of any country's quota share shall be used for new business licenses.

(2) Cheddar cheese: For new business quota shares of not to exceed 10,000 pounds per share for the period July 1, 1967, through December 31, 1967, there are set aside 754,050 pounds of the amount by which the Cheddar cheese quota was increased for the period July 1, 1967, through December 31, 1967, which shall be comprised of (i) the 153,700 pounds allocated for the specified other countries, and (ii) 600,350 pounds from New Zealand, Australia, Ireland and Sweden, provided that not more than 25 percent of any country's quota share may be set aside.

(3) In the event the total amount of new business quota shares requested exceeds the amount set aside for new business, the amount shall be pro-rated equally among persons eligible for a new business quota share. In the event licenses for the importation of the entire amount set aside for new business are not applied for by persons eligible therefor, the residual amounts shall revert to the country quotas for allocation among historical importers.

(c) Eligibility for licenses: (1) Historical:

(i) American-type cheese, other than Cheddar: Any person who imported American-type cheese, other than Cheddar, during the base period January 1, 1961, through December 31, 1965, is eligible to receive a license to import a share of the quota quantity for American-type cheese, other than Cheddar, for the period July 1, 1967, through December 31, 1967 (less that set aside for new business), pro-rated among the eligible applicants on the basis of the quantities of such cheese imported by such persons from the country of origin during the base period. The specified "other countries" shall be treated as one for the purposes of this provision.

(ii) Cheddar cheese: Any person who, prior to July 1, 1967, had established his historical eligibility under § 6.25(a) for a quota share of Cheddar cheese is eligible to receive a license to import a share of the amount by which the quota for Cheddar cheese subject to license was increased for the period July 1, 1967, through December 31, 1967 (less that set aside for new business), pro-rated among such historical licensees on the basis of the quantities of such cheese imported by such persons from the country of origin during the base period January 1, 1961, through December 31, 1965. The specified "other countries" shall be treated as one for the purposes of this provision.

(iii) Limitation of historical quota share: The historical quota share of any person as determined under subdivision (i) or (ii) of this subparagraph may not exceed 30 percent of the total quantity of such cheese which may be imported from a particular country of origin. The specified "other countries" shall be treated as one for the purposes of this provision. The quantities of cheese not allocated due to this limitation shall be apportioned among other historical eligible licensees for a quota share of such cheese, based upon their imports of such cheese during the base period.

(2) Non-historical:

(i) American-type cheese, other than Cheddar: Any person who is not historically eligible under subparagraph (1)(i) of this paragraph to receive a license to import a quota share of American-type cheese, other than Cheddar, and was during the period July 1, 1966, through June 30, 1967, actively operating an independent business of importing cheese or cheese products is eligible to receive a license to import a new business quota share of American-type cheese, other than Cheddar.

(ii) Cheddar cheese: Any person who is not historically eligible under subparagraph (1)(ii) of this paragraph to receive a license to import a quota share of Cheddar cheese and was during the period July 1, 1966, through June 30, 1967, actively operating an independent business of importing cheese or cheese products is eligible to receive a license to import a new business quota share of Cheddar cheese.

(d) Application for licenses: (1) Applications for the issuance of licenses pursuant to this § 6.32 must be sent to the Chief, Import Branch, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250, and postmarked not later than August 4, 1967. Each application must state the type of cheese for which license is desired, the country of origin from which importation is to be made, and the port or ports of entry at which importations are to be made. Except for licenses for Cheddar cheese based on historical eligibility, applications must be accompanied by acceptable documentation, preferably duty paid copies of Customs Entry Form 7501 or Withdrawal from Warehouse Form 7505, establishing the applicant's eligibility for a license under this section, and, in the case of licenses for American-type cheese other than Cheddar based on historical eligibility, the quan-

titles of such cheese imported during the base period January 1, 1961, through December 31, 1965. An applicant for a license to import a new business quota share must certify he is not a part of or affiliated with any other person eligible for an import license and that he is willing and able to import a licensed share in his own name and for his own account.

(e) Definitions: As used herein the following terms have the following meanings:

(1) Cheddar cheese means Cheddar cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese.

(2) American-type cheese means American-type cheese, including Colby, washed curd, and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing, or processed from, such American-type cheese.

(f) The provisions of §§ 6.20 to 6.31 of this part shall apply with respect to the licenses issued under this section except to the extent that they are inconsistent herewith.

It is hereby determined that the foregoing amendment 1 of Import Regulation 1, Revision 3, is necessary and must be made effective as soon as possible since the quotas established by Presidential Proclamation 3790 have become effective. Therefore, under section 553 of Title 5 of the United States Code it is found upon good cause that notice and other public rule making procedure concerning the amendment are impracticable, unnecessary, and contrary to the public interest and that good cause exists for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Proposals for amendment or modification of this amendment are invited. They may be addressed to the Chief, Import Branch, Foreign Agricultural Service, Washington, D.C. 20250. All proposals should be accompanied by a written statement in explanation and support of such proposal.

Issued at Washington, D.C., this 20th day of July 1967.

RAYMOND A. IOANES,
Administrator,
Foreign Agricultural Service.

[F.R. Doc. 67-8608; Filed, July 24, 1967; 8:52 a.m.]

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1961 and Succeeding Crop Years

APPENDIX—COUNTY DESIGNATED FOR SUGAR BEET CROP INSURANCE

Pursuant to authority contained in § 401.1 of the above-identified regulations, as amended, the following county is hereby added to the list of counties published October 21, 1966 (31 F.R. 13587), and February 1, 1967 (32 F.R. 1123), which were designated for sugar beet crop insurance for the 1967 crop year.

CALIFORNIA

Imperial.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506,-1516)

[SEAL] JOHN N. LUFF,
Manager,
Federal Crop Insurance Corporation.

[F.R. Doc. 67-8538; Filed, July 24, 1967; 8:46 a.m.]

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER C—SPECIAL PROGRAMS

[Amdt. 4; Republication of Processor Wheat Marketing Certificate Regs.]

PART 777—PROCESSOR WHEAT MARKETING CERTIFICATE REGULATIONS

Definition of Non-Food Product and Deduction for Loss Due to Unsuitable Production

The following amendment is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (see sec. 379a to 379j, 52 Stat. 31, as amended, 7 U.S.C. 1379a to 1379j), to provide a change to the Republication of the Processor Wheat Marketing Certificate Regulations (31 F.R. 13502). Consideration has been given to the views and suggestions resulting from the 15-day notice given the public pursuant to section 4 of the Administrative Procedure Act (60 Stat. 238, 5 U.S.C. 553).

Section 777.3(c)(4) as it now appears in the regulations reads as follows:

(4) Any product, being manufactured as a food product which in the course of processing inadvertently, and not by design or deliberate action on the part of the processor, becomes unsuitable for marketing as the food product originally intended to be produced, provided such product and all other products obtained from the wheat are destroyed, or prior to marketing or removal from the plant (whichever occurs first) are unsuitable for marketing as a food product and are used in or marketed as animal feed or other non-food products specified in this paragraph.

This provision was designed to cover only abnormal losses and not normal manufacturing losses which are expected to occur as part of the processing operations in the production of a food product. Processors have not been applying the provision of this subparagraph with uniformity. This amendment is issued to clarify the nonfood products which may be deducted on future processing reports under this provision of the regulations.

The Processor Wheat Marketing Certificate Regulations (31 F.R. 13502) are changed to read as follows:

The amendment reads as follows:

Section 777.3(c)(4) is amended to read as follows:

§ 777.3 Definitions.

* * * * *

(c) "Nonfood product" means:

* * * * *

(4) Any product being manufactured from wheat as a food product which becomes unsuitable for marketing as the food product originally intended to be produced provided the conditions prescribed in subdivisions (i) and (ii) of this subparagraph are met.

(i) The loss is the result of (*a*) power failure, (*b*) strike, (*c*) fire, (*d*) Act of God, or (*e*) any unforseen circumstance which, upon application of the processor, is specifically approved in writing by the Director.

(ii) Such product and all other products obtained from the wheat are destroyed or prior to marketing or removal from the plant (whichever occurs first) are rendered unsuitable for marketing as a food product and are used in or marketed as animal feed or other nonfood products specified in this paragraph.

This subparagraph (4) does not, unless the loss is the result of circumstances described in subdivision (i) of this subparagraph, cover undercooked or overcooked products; screenings or other residue from cleaning the wheat; dust; fines; floor sweepings or spillage collected in the processing plant; or any loss resulting from choke-up, starting up or shutting down processing operations.

* * * * *

Appendix II is amended by adding the following sentence to Item (12):

If a deduction is taken for loss due to unsuitable production, pursuant to § 777.3(c)(4), identify in the "remarks" space on Form CCC-160 the cause of such loss.

Effective date. This amendment shall be effective with the beginning of the first processing report period 30 days following its publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on July 18, 1967.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 67-8534; Filed, July 24, 1967; 8:46 a.m.]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

HANDLING OF MILK IN CERTAIN DESIGNATED MARKETING AREAS

Order Amending Orders

7 CFR Part—	Marketing area
1032	Southern Illinois.
1050	Central Illinois.
1062	St. Louis, Mo.
1067	Ozarks.

The findings and determinations hereinafter set forth are supplementary and

in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein. The following findings are hereby made with respect to each of the aforesaid orders.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the above designated marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than August 1, 1967. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Deputy Administrator, Regulatory Programs, was issued June 2, 1967, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued July 5, 1967. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective August 1, 1967, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553(d)(1966)).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof the handling of milk in the respective hereinafter designated marketing areas shall be in conformity to and in compliance with the terms and conditions of the aforesaid orders, as amended and as hereby further amended, as follows:

1. Paragraph (i) of the provision in each of the hereinafter designated orders entitled "Computation of uniform prices" is revised.

PART 1032—MILK IN SOUTHERN ILLINOIS MARKETING AREA

1. Paragraphs (h) and (i) of § 1032.71 are revised to read as follows:

§ 1032.71 Computation of the uniform price.

* * * * *

(h) Subtract in the case of milk delivered during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of producer milk specified in paragraph (e)(1) of this section, except that the rate of deduction for each of the months of April through August 1967 shall be 10 cents;

(i) Add in the case of milk delivered during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (h) of this section, except that in the case of money deducted pursuant to paragraph (h) of this section during 1967 one-fourth of the sum shall be added in each of the months of September, October, November, and December 1967;

* * * * *

PART 1050—MILK IN CENTRAL ILLINOIS MARKETING AREA

1. Paragraphs (h) and (i) of § 1050.71 are revised to read as follows:

§ 1050.71 Computation of the uniform price.

* * * * *

(h) Subtract in the case of milk delivered during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of producer milk specified in paragraph (e)(1) of this section, except that the rate of deduction for each of the months of April through August 1967 shall be 10 cents;

(i) Add in the case of milk delivered during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (h) of this section, except that in the case of money deducted pursuant to paragraph (h) of this section during 1967 one-fourth of the sum shall be added in each of the months of September, October, November, and December 1967;

* * * * *

PART 1062—MILK IN ST. LOUIS, MO., MARKETING AREA

1. Paragraphs (h) and (i) of § 1062.71 are revised to read as follows:

§ 1062.71 Computation of uniform prices.

* * * * *

(h) Subtract in the case of milk delivered during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of producer milk specified in paragraph (e)(1) of this section, except that the rate of deduction for each of the months of April through August 1967 shall be 10 cents;

(i) Add in the case of milk delivered during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (h) of this section, except that in the case of money deducted pursuant to paragraph (h) of this section during 1967 one-fourth of the sum shall be added in each of the months of September, October, November, and December 1967;

* * * * *

PART 1067—MILK IN OZARKS MARKETING AREA

1. Paragraphs (h) and (i) of § 1067.71 are revised to read as follows:

§ 1067.71 Computation of uniform prices.

* * * * *

(h) Subtract in the case of milk delivered during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an

amount equal to 25 cents per hundredweight of producer milk specified in paragraph (e) (1) of this section, except that the rate of deduction for each of the months of April through August 1967 shall be 10 cents;

(i) Add in the case of milk delivered during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (h) of this section, except that in the case of money deducted pursuant to paragraph (h) of this section during 1967 one-fourth of the sum shall be added in each of the months of September, October, November, and December 1967;

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: August 1, 1967.

Signed at Washington, D.C., on July 20, 1967.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 67-8536; Filed, July 24, 1967; 8:46 a.m.]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter III—Economic Development Administration, Department of Commerce

PART 301—ESTABLISHMENT AND ORGANIZATION

Disclosure of Information to the Public

In order to further implement section 552, Title 5, U.S.C. as codified by Public Law 90–23, June 5, 1967 (81 Stat. 54), and pursuant to Department of Commerce Order 64, July 4, 1967, Part 301 of Title 13 is amended as follows:

1. The authority citation is changed to read:

AUTHORITY: The provisions of this Part 301 are issued under secs. 214, 302, 79 Stat. 17, 19; 40 U.S.C. App. A. 214, 302. sec. 701, 79 Stat. 570; 42 U.S.C. 3211. 81 Stat. 54; 5 U.S.C. 552, 31 U.S.C. 483a. Department of Commerce Orders 5A and 64, 31 F.R. 16728, 32 F.R. 9734.

2. The authority for Subpart C is deleted.

3. Section 301.63 of Title 13, is revised to read:

§ 301.63 Disclosure of information to the public.

This section describes the arrangements whereby the materials specified in 5 U.S.C. 552(a) (2) are made available for public inspection and copying, and the procedures and other conditions whereby identifiable records requested by persons may be made available to them pursuant to 5 U.S.C. 552(a) (3).

(a) *Publication in the Federal Register.* Those materials which are required to be published in the FEDERAL REGISTER pursuant to the provisions of 5 U.S.C. 552(a) (1) have been and shall continue to be published in the FEDERAL REGISTER and shall, to the extent practicable and to further assist the public, be made available for inspection and copying at the facility identified in paragraph (b) (3) of this section.

(b) *Availability of materials for inspection and copying.* (1) In accordance with 5 U.S.C. 552(a) (2) and other provisions of law, a public information facility is established wherein EDA maintains a reference facility for the public inspection and copying of:

(i) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases.

(ii) Those statements of policy and interpretations which have been adopted by EDA and are not published in the FEDERAL REGISTER.

(iii) Administrative staff manuals and instructions to staff that affect a member of the public.

(iv) A current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and required to be made available or published by section 552(a) (2).

(v) Such additional materials as the Assistant Secretary of Commerce for Economic Development, in his discretion may consider desirable and practicable to make available for the convenience of the public.

(2) In order to prevent unwarranted invasion of personal privacy, EDA may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction, and shall, in each such case, explain in writing the justification for the deletion.

(3) The above materials may be inspected in the Office of Public Affairs, Publications Division, Room 6814 B, Commerce Building, 14th Street between Constitution and E Streets NW., Washington, D.C. 20230. In addition, for the convenience of the public, most of these materials may also be inspected at each of the EDA area offices listed in § 301.31. The Office of Public Affairs, Publications Division, Washington, D.C., and the respective EDA area offices are open to the public Monday through Friday of each week, except on official holidays, between the hours of 9 a.m. and 4:30 p.m. There are no fees or formal requirements for such inspections. Copies of these materials may be obtained at these facilities at cost. In addition, copies of various EDA materials regularly available for sale by EDA may be purchased from the Office of Public Affairs, Publications Division, and EDA area offices.

(4) Correspondence concerning the materials available in the facility should be sent to the Office of Public Affairs, Publications Division at the above address.

(c) *Requests for identifiable records.* (1) A person who wishes to inspect a record which is not customarily available to the public as part of the regular informational activities of EDA should complete Form CD–244, "Application to Inspect Records," and submit this form, in person or by mail, to the Office of Public Affairs, Publications Division, Room 6814 B, Commerce Building, Washington, D.C. 20230. Copies of Form CD–244 are available at the Office of Public Affairs, Publications Division and each of the EDA area offices listed in § 301.31.

(2) An application form shall be submitted for each record or group of records related to the same general subject matter. Each application form shall be accompanied by the nonrefundable application fee of $2.

(3) Detailed instructions for the completion of Form CD–244 are stated on the back of the form. Employees of the Office of Public Affairs, Publications Division and the EDA area offices will be available to answer questions concerning the application form and its filing. The applicant has the sole responsibility to identify each record sought in sufficient detail so that it can be located by personnel familiar with the filing of agency records. Each application shall clearly itemize, when there are more than one, each record requested so that it may be identified and its availability separately determined.

(4) All requests for agency records not customarily made available to the public received by EDA area offices shall promptly be referred, without further action, to the Office of Public Affairs, Publications Division for a determination in accordance with paragraph (d) of this section.

(5) The Office of Public Affairs, Publications Division, will review the application for completeness, and will record receipt of the fee. If the application is incomplete in some substantial and material respect, it shall be promptly returned to the applicant to complete.

(d) *Determinations of availability of records.* (1) Upon receipt of requests for information, the Office of Public Affairs, Publications Division shall initially determine:

(i) Whether the requested record can be identified on the basis of the information supplied by the applicant. If it cannot identify the record, the application shall be returned to the applicant, specifying why it is not identifiable and what additional clarification, if any, the applicant may make to assist EDA in its identification.

(ii) Whether the record, if identifiable, is still in existence or has been destroyed as provided by law, or is not in the possession of EDA. If the record no longer exists, the applicant shall be so notified, with the reason stated. If the record is not in EDA's possession and its existence is not otherwise reasonably ascertainable, the applicant shall be so notified. If the requested record is in another organization of the Department of Commerce, or is the exclusive or primary concern of another executive department or agency, the application for the record shall be promptly referred to such other organization or agency for further action under its rules, and the applicant shall be promptly informed of this referral by the

Office of Public Affairs, Publications Division.

(2) If the requested record is identifiable and subject to EDA's determination as to its availability, the application shall be reviewed by an official authorized pursuant to Department Order 64 to initially determine its availability. If it is determined, after consultation with the Office of the Chief Counsel that, as provided by law, the record is not to be made available to the requesting person, said party shall receive in writing the specific reason(s) why the record is not being disclosed, signed by the official making the determination.

(3) If the record is to made available and there are no further charges or fees, it shall be furnished to the requesting person. If, in accord with paragraph (e) of this section, there are additional costs to be recovered from the applicant, they shall be estimated and the applicant notified that upon his payment of such estimated costs subject to adjustment as provided in paragraph (e) of this section, the record shall be made available to him at the Office of Public Affairs, Publications Division, or transmitted to him by it.

(e) *Fees and charges.* (1) In accord with Congressional policies that services performed hereunder are to be self-sustaining, and as provided by law, appropriate fees and charges are hereby established to cover costs for application handling, record searching, reproduction, certification, and authentication, and for related expenses incurred by EDA with respect to records made available upon request under 5 U.S.C. 552(a)(3).

(2) The following fees are hereby established and payable to EDA:

(i) Application fee—per application	$2.00

This fee is nonrefundable, and covers costs of accepting and reviewing the application, and making a determination as to the availability of the requested record, or group of related records.

(ii) Records search fee—per half-hour, or any fraction thereof, per person	$2.50

This fee covers the costs of locating the desired record, transporting it by government messenger service to a point of inspection, supervising the inspection, and returning the record to its regular file. It also includes the costs of any copies or records made at EDA's option. The minimum fee charged for records search will be one-half hour ($2.50).

(iii) Copies of records, if requested by applicant:	
(a) Xerographic or similar process—	
Up to 9 x 14 inches (each page)	$0.25
(b) Photocopy or similar process—	
Up to 12 x 18 inches (each copy)	1.00
Over 12 x 18 inches but less than 18 x 25 inches (each)	2.00
(iv) Other forms of reproduction as may be required by the nature of the original records: Individual fee, sufficient to recover full cost	[1]
(v) Certification fee, if requested—Applicable to each certification	1.00
(vi) Postage, registration, or other forwarding or packing fees—Applicable only if copies of records are requested to be shipped to a point other than the Office of Public Affairs, Publications Division.	[1]

[1] Actual cost.

(3) All fees and charges will be collected in advance. The applicant will be given an estimate of the cost of records search for each application where disclosure availability is authorized. If actual cost exceeds the estimate, the applicant will have the option of either paying any additional costs, or inspecting the requested record to the extent covered by his payment. If the advance estimated payment is $1 or more in excess of both the actual cost and the minimum charge, a refund will be made of the excess above the higher of these two amounts.

(4) The fees set forth above are based upon an initial estimate of the costs to be incurred in providing the indicated services and may be revised as necessary to insure the recovery of full costs by EDA.

(5) The above fees are established solely for services provided pursuant to 5 U.S.C. 552(a)(3), and do not affect fees charged for other EDA services to the public, as may be performed under other authorities.

(f) *Arrangements for public inspection and copying of agency records subject to disclosure.* (1) Upon receipt of the records search fee, and any fees for additional services requested by the applicant, the requested record which has been determined to be available shall, unless the applicant has otherwise indicated, be transferred to the Office of Public Affairs, Publications Division where it will be held for inspection by the applicant for 5 working days. The address, and hours of operation, of this facility are stated in paragraph (b)(3) of this section.

(2) During his inspection of the record at the facility, the applicant may copy by hand any portion of the record, may use the coin-operated copying equipment at the facility to make a copy thereof, and may obtain certification of a machine-copied record.

(3) No changes or alterations of any type may be made to the record being inspected, nor may any matter be added to or subtracted therefrom. Papers bound or otherwise assembled in a record file may not be disassembled during inspection. Staff of the facility shall provide assistance if disassembly of a record is necessary for copying purposes, and are authorized to supervise public inspection as necessary to protect the records of EDA.

(4) If an applicant does not want to inspect a record by personal visit to the Office of Public Affairs, Publications Division, he may request that a copy thereof be mailed to him, upon payment of the copying and postage fees set forth in this section.

(5) No person may, without permission, remove any record made available to him for inspection or copying under this part, from the place where it is made available. In addition, no person may steal, alter, mutilate, obliterate, or destroy, in whole or part, such a record. See sections 641 and 2071 of Title 18 of the United States Code.

(g) *Requests for reconsideration.* (1) Any person whose application to inspect a record has been rejected because the record was not to be made available for stated reason(s), may request a reconsideration of the initial denial, as set forth herein.

(2) The request for reconsideration should be made by completing the applicable section of the Form CD-244, and returning it to the Office of Public Affairs, Publications Division, within 30 days of the date of the original denial. (This date is shown on the Form CD-244). No additional fee is required to obtain reconsideration. In submitting a request for reconsideration, the applicant should include any written arguments he desires to support his belief that the record requested should be made available. No personal appearance, oral argument or hearing shall be permitted.

(3) The decision upon such review shall be made by the Assistant Secretary of Commerce for Economic Development and shall be based upon the original application, the denial, and any written argument submitted by the applicant.

(4) The decision upon review shall be promptly made in writing and communicated to the applicant. If the decision is wholly or partly in favor of the applicant, the requested record shall to the extent determined be made available for inspection, as described in paragraph (d)(3) of this section. To the extent that the decision is adverse to the request, the reasons for the denial shall be stated.

(5) A decision upon review completed as provided by this section shall constitute the final decision and action of EDA as to the availability of a requested record, except as may be required by court proceedings initiated pursuant to 5 U.S.C. 552(a)(3).

(6) Reconsiderations resulting in final decisions as prescribed herein shall be indexed and kept available for public reference in the Office of Public Affairs, Publications Division.

(h) *Subpoena or other compulsory process.* Procedures applicable in the event of a subpoena, order, or other compulsory process or demand of a court or other authority are set forth in section 7 of Department Order 64.

Notice and public procedure are not necessary for the promulgation of this part since the rules contained herein are procedural rather than substantive in nature and related to agency management.

Effective date. This section shall become effective July 4, 1967.

Dated: July 11, 1967.

ROSS D. DAVIS,
Assistant Secretary
for Economic Development.

[F.R. Doc. 67-8457; Filed, July 24, 1967; 8:45 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 67-CE-90]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Duluth, Minn., control zone.

Since designation of this control zone, the airport latitude coordinate for the Duluth, Minn., International Airport has been changed from "46°50'28" N." as recited in said designation to "46°50'30" N." Action is taken herein to reflect this change.

Since this amendment is minor in nature and imposes no additional burden on any person, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., September 14, 1967, as hereinafter set forth:

In § 71.171 (32 F.R. 2071), the Duluth, Minn., control zone is amended to read:

DULUTH, MINN.

Within a 5-mile radius of Duluth, Minn., International Airport (latitude 46°50'30" N., longitude 92°11'25" W.); within 2 miles each side of the Duluth ILS west course, extending from the 5-mile radius zone to the OM; within 2 miles each side of the Duluth ILS east course, extending from the 5-mile radius zone to 8 miles east of the intersection of the Duluth ILS east course and the Duluth VORTAC 062° radial; within 2 miles each side of the Duluth VORTAC 197° radial, extending from the 5-mile radius zone to 8 miles south of the VORTAC; and within 2 miles each side of the Duluth VORTAC 023° radial, extending from the 5-mile radius zone to 9 miles northeast of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on July 10, 1967.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 67-8578; Filed, July 24, 1967; 8:49 a.m.]

[Airspace Docket No. 67-SW-18]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Waco, Tex., control zone.

On May 25, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 7634) stating the Federal Aviation Administration proposed to alter the Waco, Tex., control zone.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., September 14, 1967, as herein set forth.

In § 71.171 (32 F.R. 2143) the Waco, Tex., control zone is redesignated as follows:

WACO, TEX.

That airspace within a 5-mile radius of the Waco Municipal Airport(latitude 31°36'40" N., longitude 97°13'40" W.); within 2 miles each side of the Waco VORTAC 330° radial, extending from the 5-mile radius zone to 8 miles NW of the VORTAC; within 2 miles each side of the Waco ILS localizer N course, extending from the 5-mile radius zone to the OM; within a 5-mile radius of James Connally AFB (latitude 31°38'20" N., longitude 97°04'25" W.); within 2 miles each side of the Waco VORTAC 098° radial extending from the James Connally AFB 5-mile radius zone to the VORTAC; within 2 miles each side of a 350° bearing from the Connally RBN extending from the 5-mile radius zone to the RBN, and within 2 miles each side of the James Connally TACAN 352° radial extending from the TACAN to 7 miles N.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Fort Worth, Tex., on July 12, 1967.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 67-8579; Filed, July 24, 1967; 8:49 a.m.]

[Airspace Docket No. 67-AL-6]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone, Revocation of Control Area Extension, and Designation of Transition Area

On May 15, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 7290) describing the proposed controlled airspace in the Bethel, Alaska, terminal area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. The one comment received from the Department of the Air Force, Alaskan Air Command, stated that the proposed change to the Bethel terminal airspace structure would have no adverse effect on their operations.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001, e.s.t., September 14, 1967, as hereinafter set forth.

1. In § 71.171 (32 F.R. 2077), the Bethel, Alaska, Control Zone is amended as follows:

BETHEL, ALASKA

Within a 5-mile radius of the Bethel Municipal Airport (latitude 60°47'01" N., longitude 161°49'59" W.); within 3 miles each side of the BEA RBN 014° bearing extending from the 5-mile radius zone to 8 miles N of the RBN; within 2 miles each side of the BET RBN 293° bearing extending from the 5-mile radius zone to 8 miles NW of the RBN; and within 2 miles each side of the Bethel VORTAC 213° radial extending from the 5-mile radius zone to 8 miles SW of the VORTAC.

2. In § 71.165 (32 F.R. 2068), the Bethel, Alaska, Control Area Extension is revoked.

3. In § 71.181 (32 F.R. 2148), the following transition area is added:

BETHEL, ALASKA

That airspace extending upward from 1,200 feet above the surface within a 22-mile radius of the Bethel VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Anchorage, Alaska, on July 13, 1967.

GEORGE M. GARY,
Director, Alaskan Region.

[F.R. Doc. 67-8580; Filed, July 24, 1967; 8:49 a.m.]

[Airspace Docket No. 67-SO-69]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to alter the Macon, Ga., control zone and transition area.

The Macon control zone is described in § 71.171 (32 F.R. 2071) and the Macon transition area is described in § 71.181 (32 F.R. 2148).

In each of these descriptions, reference is made to the Macon Municipal Airport. Since the name of this airport has been changed to "Lewis B. Wilson Airport," it is necessary to amend the descriptions accordingly.

Since these amendments are editorial in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (32 F.R. 2071), the Macon, Ga., control zone is amended by deleting the name "* * * Macon Municipal Airport * * *" and substituting therefor "* * * Lewis B. Wilson Airport * * *" wherever it appears.

In § 71.181 (32 F.R. 2148), the Macon, Ga., transition area is amended by deleting the name "* * * Macon Municipal Airport * * *" and substituting therefor "* * * Lewis B. Wilson Airport * * *" wherever it appears.

(Sec. 307(a) Federal Aviation Act of 1958; 49 U.S.C. 1348(a))

Issued in East Point, Ga., on July 11, 1967.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 67-8581; Filed, July 24, 1967; 8:49 a.m.]

[Airspace Docket No. 67-SO-71]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

The purpose of these amendments to Part 71 of the Federal Aviation Regulations is to alter the Greensboro, N.C., control zone and transition area.

The Greensboro control zone is described in § 71.171 (32 F.R. 2071) and the Greensboro transition area is described in §71.181 (32 F.R. 2148 and 7392).

In each of these descriptions, reference is made to the Greensboro-High Point Airport. Since the name of this airport has been changed to "Greensboro/High Point/Winston-Salem Airport," it is necessary to amend the descriptions accordingly.

Since these amendments are editorial in nature, notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective immediately, as hereinafter set forth.

In § 71.171 (32 F.R. 2071), the Greensboro, N.C., control zone is amended by deleting the name "* * * Greensboro-High Point Airport * * *" and substituting therefor "* * * Greensboro/High Point/Winston-Salem Airport * * *" wherever it appears.

In § 71.181 (32 F.R. 2148), the Greensboro, N.C., transition area (32 F.R. 7392) is amended by deleting the name "* * * Greensboro-High Point Airport * * *" and substituting therefor "* * * Greensboro/High Point/Winston-Salem Airport * * *" wherever it appears.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348(a))

Issued in East Point, Ga., on July 12, 1967.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 67-8582; Filed, July 24, 1967; 8:49 a.m.]

[Airspace Docket No. 67-WE-21]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Federal Airway

On May 11, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 7133) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a 1,200 feet AGL North alternate to V-4 from the intersection of Yakima, Wash., 129° and Pasco, Wash., 276° true radials, via Pasco, to Pendleton, Oreg., excluding the airspace between the main and north alternate airway, and the airspace within R-6715. The purpose of this action was to simplify flight planning and to reduce the airway mileage between Yakima and Pasco.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. All comments received were favorable.

Subsequent to publication of the notice it was determined that the assignment of the number V-4 north to the segment would not facilitate flight planning as a flight from Yakima to Pasco would be required to stipulate flight along both V-4 and V-4 north alternate. The assignment of a single number to the segment between Yakima and Pasco would solve the problem. V-298 is designated from Pendleton eastward. Accordingly, the number V-298 could be assigned to the airway segment under consideration and would result in an extension of the present V-298 westward to Yakima. Such action is taken herein.

Since the renumbering of the airway segment as proposed herein is minor in nature and will impose no undue burden on any person, the Administrator has determined that notice and public procedure hereon is unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective September 14, 1967 as hereinafter set forth.

Section 71.123 (29 F.R. 2009) is amended as follows:

In V-298 "From Pendleton, Oreg.," is deleted and "From Yakima, Wash., 12 AGL INT Yakima 129° and Pasco, Wash.; 276° radials; 12 AGL Pasco; 12 AGL Pendleton, Oreg.," is substituted therefor. "The airspace within R-6715 is excluded." is added at the end of the description.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Washington, D.C., on July 14, 1967.

J. F. BIRON,
Acting Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 67-8583; Filed, July 24, 1967; 8:49 a.m.]

[Airspace Docket No. 67-CE-52]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On page 7463 of the FEDERAL REGISTER dated May 19, 1967, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Dubuque, Iowa.

Interested persons were given 45 days to submit written comments, suggestions or objections regarding the proposed amendment.

No objections have been received and the amendment as so proposed is hereby adopted, subject to the following change, occasioned by the renumbering of federal airway V-63 to V-216 subsequent to publication of the subject notice:

That portion of the 1,200-foot floor transition area designation for Dubuque, Iowa recited in the subject Notice which reads "V-63" is deleted and "V-216" is substituted therefor.

This amendment shall be effective 0001 e.s.t., September 14, 1967.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Kansas City, Mo., on July 10, 1967.

DANIEL E. BARROW,
Acting Director, Central Region.

Redesignate the Dubuque, Iowa, transition area as that airspace extending upward from 700 feet above the surface within a 7-mile radius of the Dubuque Municipal Airport (latitude 42°24'10" N., longitude 90°42'55" W.), within 8 miles SW and 5 miles NE of the Dubuque VORTAC 321° radial, and within 8 miles NE and 5 miles SW of the Dubuque VORTAC 126° radial extending from the VORTAC to 12 miles NW and SE of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at latitude 42°05'00" N., longitude 91°00'00" W., thence W along latitude 42°05'00" N., to and N along longitude 92°15'00" W., to and counterclockwise along the arc of a 29-mile radius circle centered on the Waterloo, Iowa, VORTAC, to and E along the S edge of V-100, to and clockwise along the arc of a 29-mile radius circle centered on the Dubuque VORTAC, to and SE along the SW edge of V-218, to and S along longitude 89°55'00" W., to and SW along the NW edge of V-216, to and W along the N edge of V-172, to and N along longitude 91°00'00" W., to the point of beginning.

[F.R. Doc. 67-8584; Filed, July 24, 1967; 8:50 a.m.]

[Airspace Docket No. 67-SO-59]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

On June 2, 1967, a notice of proposed rule making was published in the FEDERAL REGISTER (32 F.R. 7979) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Salisbury, N.C., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

Subsequent to the publication of the Notice, it was determined that the references to "a 003° bearing" and the direction "NE" should have read "the 003° bearing" and "N" respectively. Additionally, the geographic coordinate (latitude 35°38'30" N., longitude 80°31'10" W.) for the Rowan County Airport was obtained from the Coast and Geodetic Survey. Accordingly, action is taken herein to correct the technical discrepancies and to add the geographic coordinate for the airport in the description

of this transition area. Since these changes are minor in nature and impose no additional burden on any person, they are incorporated in this rule.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.d.s.t., September 14, 1967, as hereinafter set forth.

In § 71.181 (32 F.R. 2148) the Salisbury N.C., transition area is amended to read:

SALISBURY, N.C.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Rowan County Airport (latitude 35° 38'30" N., longitude 80°31'10" W.); within 2 miles each side of the 008° bearing from the Salisbury NDB (latitude 35°40'30" N., longitude 80°31'20" W.), extending from the 6-mile radius area to 8 miles north of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348(a))

Issued in East Point, Ga., on July 13, 1967.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 67-8585; Filed, July 24, 1967; 8:50 a.m.]

[Airspace Docket No. 67-SW-44]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the San Antonio, Tex., transition area.

The San Antonio, Tex., transition area is described in § 71.181 (32 F.R. 2249). A portion of the 700-foot transition area is described as "* * * within 5 miles northeast and 8 miles southwest of the 149° bearing from the Randolph AFB RBN extending from the RBN to 12 miles southeast * * *."

The Randolph AFB RBN is to be decommissioned and the instrument approach procedure based thereon will be canceled. It is necessary to amend the San Antonio, Tex., transition area by deleting airspace based on the RBN.

Since this amendment lessens the burden on the public, notice and public procedures hereon are unnecessary.

In consideration of the foregoing Part 71 of the Federal Aviation Regulations is amended, effective 0001 e.s.t., July 20, 1967, as hereinafter set forth.

In § 71.181 (32 F.R. 2249) the San Antonio, Tex., transition area is amended by deleting "* * * within 5 miles northeast and 8 miles southwest of the 149° bearing from the Randolph AFB RBN extending from the RBN to 12 miles southeast * * *."

(Sec. 307(a), Federal Aviation Act of 1958; 49 U.S.C. 1348)

Issued in Fort Worth, Tex., on July 14, 1967.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 67-8586; Filed, July 24, 1967; 8:50 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 8649 c]*

PART 13—PROHIBITED TRADE PRACTICES

Federated Nationwide Wholesalers Service et al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections:* 13.15–260 Retailer as wholesaler, jobber, factory distributor; § 13.155 *Prices:* 13.155–80 Retail as cost, wholesale, discounted, etc. Subpart—Misrepresenting oneself and goods—Business status, advantages or connections: § 13.1550 *Retailer as wholesaler, jobber, or factory distributor.* Subpart—Misrepresenting oneself and goods—Prices: § 13.1820 *Retail as cost, etc., or discounted.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Federated Nationwide Wholesalers Service, Garydean Corp., trading under the name Federated Wholesalers Service, etc., Lynbrook, Long Island, N.Y., Docket 8649 c., June 15, 1967]

In the Matter of Federated Nationwide Wholesalers Service, Garydean Corp., a Corporation Trading Under the Names Federated Wholesalers Service, Nationwide Wholesalers Service, and Nationwide-Federated Wholesalers Service, Jay Norris Corp., a Corporation, and Mortimer Williams, Individually and as Officers of Said Corporations

Order requiring a Lynbrook, N.Y., mail order catalog merchandiser selling to consumers to cease misrepresenting itself as a wholesaler which sells at wholesale prices.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the findings of fact, conclusions of law, and order of the hearing examiner be, and they hereby are, set aside.

It is further ordered, That the findings of fact and conclusions of law of the Commission be, and they hereby are, substituted for those of the examiner.

It is further ordered, That Federated Nationwide Wholesalers Service, Garydean Corp., a corporation, trading under the names Federated Wholesalers Service, Nationwide Wholesalers Service, and Nationwide-Federated Wholesalers Service or under any other name or names, Jay Norris Corp., a corporation, and their officers, and Joel Jacobs and Mortimer Williams, individually and as officers of each of said corporations, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of electric fry pans, electric broilers, clock-radios, electric can openers, jewelry, clothing, dinnerware, or any other articles of merchandise, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing directly or by implication in any advertising, including all advertising circulars, lists of wholesalers, or catalogs distributed by Federated Nationwide Wholesalers Service, Garydean Corp., or otherwise representing directly or by implication that an article of merchandise is being offered for sale at the lowest wholesale price unless the article is being offered for sale at the lowest price paid by retailers for such merchandise to any source of supply.

2. Representing, directly or by implication, in any advertising, including all advertising circulars, lists of wholesalers, or catalogs distributed by Federated Nationwide Wholesalers Service, Garydean Corp., or otherwise representing, directly or by implication, that respondents are wholesalers, or that they sell articles of merchandise at wholesale prices or at low wholesale prices: *Provided, however,* That it shall be a defense in any enforcement proceeding under this order for respondents to show:

(a) That they make a substantial and significant number of sales to retailers in the ordinary course of business, and

(b) That the prices represented to be wholesale, or low wholesale, prices do not exceed the prices usually and customarily paid by retailers for such merchandise to any source of supply, when purchased in the quantity offered for sale by respondents.

3. Misrepresenting in any manner the amount of savings available to purchasers of respondents' merchandise.

It is further ordered, That respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist set forth herein.

By the Commission. Commissioner Elman concurred in the order and has filed a separate statement. Commissioner Reilly concurred in the result.

Issued: June 16, 1967.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 67-8542; Filed, July 24, 1967; 8:47 a.m.]

[Docket No. C-1241]

PART 13—PROHIBITED TRADE PRACTICES

David Hoffman and Hoffman & Son

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053–80 Textile Fiber Products Identification Act. Subpart—Invoicing products falsely: 13.1108–40 Federal Trade Commission Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185–90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–90 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; secs. 2–5, 54 Stat. 1128–1130, 72 Stat. 1717; 15 U.S.C. 45, 68, 70) [Cease and desist order, David Hoffman trading as Hoffman & Son, Worcester, Mass., Docket C–1241, June 30, 1967]

In the Matter of David Hoffman, an Individual Trading as Hoffman & Son

Consent order requiring a Worcester, Mass., producer of wool fiber stock to cease misrepresenting the fiber content of wool products on invoices, misbranding woolens, and furnishing false guaranties on textile fiber products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent David Hoffman, an individual trading as Hoffman & Son, or under any other trade name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondent David Hoffman, an individual trading as Hoffman & Son, or under any other trade name, and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of wool products or other products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting the character or amount of the constituent fibers contained in such products, on invoices or shipping memoranda applicable thereto or in any other manner.

It is further ordered, That respondent David Hoffman, an individual trading as Hoffman & Son, or under any other trade name, and respondent's representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

Issued: June 30, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67–8543; Filed, July 24, 1967; 8:47 a.m.]

[Docket No. C–1245]

PART 13—PROHIBITED TRADE PRACTICES

Mars Manufacturing Co., Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185–80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–80 Textile Fiber Products Identification Act. Subpart — Misrepresenting oneself and goods — Goods: § 13.1715 *Quality.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* 13.1845–70 Textile Fiber Products Identification Act; § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–70 Textile Fiber Products Identification Act. Subpart—Using misleading name—Goods: § 13.2280 *Composition:* 13.2280–70 Textile Fiber Products Identification Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply Sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; 15 U.S.C. 45, 70) [Cease and desist order, Mars Manufacturing Co., Inc., et al., Asheville, N.C., Docket C–1245, June 30, 1967]

In the Matter of Mars Manufacturing Co., Inc., of Asheville, N.C., a Corporation, and Morry A. Bard, Ronald S. Bard, and Sally G. Bard, Individually and as Officers of Said Corporation

Consent order requiring an Asheville, N.C., distributor of textile products to cease misbranding textile fiber products and misrepresenting imperfect hosiery as first or perfect quality.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Mars Manufacturing Co., Inc., of Asheville, N.C., a corporation, and its officers, and Morry A. Bard, Ronald S. Bard, and Sally G. Bard, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

2. Failing to set forth all parts of the required information conspicuously and separately on the same side of the label in such a manner as to be clearly legible and readily accessible to the prospective purchaser.

3. Setting forth nonrequired information or representations on the label or elsewhere on the product in such a manner as to minimize, detract from, or conflict with information required by the said Act and the rules and regulations promulgated thereunder.

B. Failing to maintain and preserve for at least 3 years proper records showing the fiber content of textile fiber products manufactured by them, as required by section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations promulgated thereunder.

It is further ordered, That respondents Mars Manufacturing Co., Inc., of Asheville, N.C., a corporation, and its officers, and Morry A. Bard, Ronald S. Bard, and Sally G. Bard, individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hosiery, or other related "industry products", which are "irregulars," "seconds," or otherwise imperfect, as such terms are defined in Rule 4(c) of the Amended Trade Practice Rules for the Hosiery Industry (16 CFR 152.4(c)), in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Selling or distributing any such product without clearly and conspicuously marking on each stocking the words "irregulars" or "seconds", as the case may be, in such degree of permanency as to remain thereon until the consummation of the consumer sale and of such conspicuousness as to be easily observed and read by the purchasing public.

B. Using the words "first quality" or words similar import on the package in which such product is sold or in reference to any such product in any advertisement or promotional material.

C. Representing in any other manner, directly or by implication, that such products are first quality or perfect quality.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report

in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 30, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-8544; Filed, July 24, 1967; 8:47 a.m.]

[Docket No. C-1244]

PART 13—PROHIBITED TRADE PRACTICES

Gloveshire Coats, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185–90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; secs. 2–5, 54 Stat. 1128–1130; 15 U.S.C. 45, 68) [Cease and desist order, Gloveshire Coats, Inc., et al., New York, N.Y., Docket C-1244, June 30, 1967]

In the Matter of Gloveshire Coats, Inc., and Toby Juniors, Ltd., Corporations, and Stuart Glovinsky and Jerome Glovin, Individually and as Officers of Said Corporations

Consent order requiring two New York City clothing manufacturers to cease misbranding their wool products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Gloveshire Coats, Inc., and Toby Juniors, Ltd., corporations, and their officers, and Stuart Glovinsky and Jerome Glovin, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 30, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-8545; Filed, July 24, 1967; 8:47 a.m.]

[Docket No. C-1239]

PART 13—PROHIBITED TRADE PRACTICES

Paramount Fibre Corp., Inc., and Sol Rosenblum

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053–80 Textile Fiber Products Identification Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.–1185–80 Textile Fiber Products Identification Act; 13.1212–90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.–1212–80 Textile Fiber Products Identification Act; 13.1185–90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition:* 13.–1845–80 Wool Products Labeling Act; § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–70 Textile Fiber Products Identification Act; 13.–1852–80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; secs. 2–5, 54 Stat. 1128–1130, 72 Stat. 1717; 15 U.S.C. 45, 68, 70) [Cease and desist order, Paramount Fibre Corp., Inc., et al., Bronx, N.Y., Docket C-1239, June 30, 1967]

Consent order requiring a Bronx, N.Y., clothing manufacturer to cease misbranding and falsely guaranteeing its textile fiber products and misbranding its wool products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Paramount Fibre Corp., Inc., a corporation, and its officers, and Sol Rosenblum, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Failing to set forth the common generic name of fibers in naming such fibers in the required information on stamps, tags, labels, or other means of identification attached to wool products.

It is further ordered, That respondents Paramount Fibre Corp., Inc., a corporation, and its officers, and Sol Rosenblum, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents Paramount Fibre Corp., Inc., a corporation, and its officers, and Sol Rosenblum, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 30, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-8546; Filed, July 24, 1967; 8:47 a.m.]

[Docket No. C-1240]

PART 13—PROHIBITED TRADE PRACTICES

Simon and Mogilner et al.

Subpart—Furnishing false guaranties: § 13.1053 *Furnishing false guaranties:* 13.1053–80 Textile Fiber Products Identification Act; 13.1053–90 Wool Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185–80 Textile Fiber Products Identification Act; 13.1185–90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–80 Textile Fiber Products Identification Act; 13.1212–90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–70 Textile Fiber Products Identification Act; 13.1852–80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; secs. 2–5, 54 Stat. 1128–1130, 72 Stat. 1717; 15 U.S.C. 45, 68, 70) [Cease and desist order, Simon and Mogilner et al. trading as Simon and Mogilner, Birmingham, Ala., Docket C-1240, June 30, 1967]

Consent order requiring a Birmingham, Ala., manufacturer of children's clothing to cease misbranding and falsely guaranteeing its wool and textile fiber products and falsely advertising its textile fiber products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner, and Blair Simon, individually and as copartners trading as Simon and Mogilner, or any other name, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner and Blair Simon, individually and as copartners trading as Simon and Mogilner, or any other name, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any wool product is not misbranded under the Wool Products Labeling Act of 1939 and the rules and regulations promulgated thereunder when there is reason to believe that any wool product so guaranteed may be introduced, sold, transported or distributed, in commerce as the term "commerce" is defined in the aforesaid Act.

It is further ordered, That respondents Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner and Blair Simon, individually and as copartners trading as Simon and Mogilner, or any other name, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Misbranding textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising, or otherwise identifying such products as to the name or amount of constituent fibers contained therein.

2. Failing to affix a stamp, tag, label, or other means of identification to each such product showing in a clear, legible and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

B. Falsely and deceptively advertising textile fiber products by making any representations, by disclosure or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product unless the same information required to be shown on the stamp, tag, label, or other means of identification under section 4(b) (1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of a fiber present in the textile fiber product need not be stated.

It is further ordered, That respondents Simon and Mogilner, a partnership, and Isadore E. Simon, Emanuel Mogilner, and Blair Simon, individually and as copartners, trading as Simon and Mogilner, or any other name, and Jerrold A. Simon, individually and as Director of Quality, Finishing and Packaging of Simon and Mogilner, and Max Friedman, individually and as Assistant General Manager of Simon and Mogilner, and respondents' representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from furnishing a false guaranty that any textile fiber product is not misbranded or falsely invoiced under the provisions of the Textile Fiber Products Identification Act.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 30, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-8547; Filed, July 24, 1967; 8:47 a.m.]

[Docket No. C-1242]

PART 13—PROHIBITED TRADE PRACTICES

Smart Modes of Calif., Inc., et al.

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108–45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185–30 Fur Products Labeling Act; 13.1185–90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–30 Fur Products Labeling Act; 13.1212–90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–35 Fur Products Labeling Act; 13.1852–80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; secs. 2–5, 54 Stat. 1128–1130; sec. 8, 65 Stat. 179; 15 U.S.C. 45, 68, 69f) [Cease and desist order, Smart Modes of Calif., Inc., et al., Los Angeles, Calif., Docket C-1242, June 30, 1967]

In the Matter of Smart Modes of Calif., Inc., a Corporation, and Julius Reinis and Lester Leonard, Individually and as Officers of Said Corporation

Consent order requiring a Los Angeles, Calif., clothing manufacturer to cease

misbranding its fur and wool products and falsely invoicing its furs.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Smart Modes of California, Inc., a corporation, and its officers, and Julius Reinis and Lester Leonard, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Falsely or deceptively labeling or otherwise identifying such fur product as to the name or designation of the animal or animals that produced the fur contained in the fur product.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

3. Setting forth on a label attached to such fur product the name or names of any animal or animals other than the name of the animal producing the fur contained in the fur product as specified in the Fur Products Name Guide, and as prescribed by the rules and regulations.

4. Setting forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form on a label affixed to such fur product.

5. Setting forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in handwriting on a label affixed to such fur product.

6. Failing to set forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder on a label in the sequence required by Rule 30 of the aforesaid rules and regulations.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Failing to set forth the term "natural" as part of the information required to be disclosed on an invoice under the Fur Products Labeling Act and rules and regulations promulgated thereunder to describe such fur product which is not pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Failing to set forth on an invoice the item number or mark assigned to such fur product.

It is further ordered, That respondents Smart Modes of California, Inc., a corporation, and its officers, and Julius Reinis and Lester Leonard, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the manufacture for introduction into commerce, the introduction into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding wool products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 30, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-8548; Filed, July 24, 1967; 8:47 a.m.]

[Docket No. 8584 c]

PART 13—PROHIBITED TRADE PRACTICES

Surprise Brassiere Co., Inc., et al.

Subpart—Discriminating in price under sec. 2, Clayton Act—Payment for services or facilities for processing or sale under 2(d): § 13.824 *Advertising expenses.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 2, 49 Stat. 1526; 15 U.S.C. 13) [Cease and desist order, Surprise Brassiere Co., Inc., et al., New York, N.Y., Docket 8584, June 15, 1967]

In the Matter of Surprise Brassiere Co., Inc., a Corporation, and Samuel Dosik and Eugene Newman, Individually and as Officers of Said Corporation

Consent order requiring a New York City manufacturer of brassieres, girdles and corselettes to cease discriminating among its customers in the payment of promotional allowances in violation of section 2(d) of the Clayton Act.

The order to cease and desist is as follows:

It is ordered, That respondent Surprise Brassiere Co., Inc., a corporation, and its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the manufacture, sale, or distribution of women's wearing apparel, such as brassieres, girdles, corselets, and other related products, in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from:

Paying or contracting for the payment of anything of value to, or for the benefit of, any customer of respondent, as compensation for or in consideration for any services or facilities furnished by or through such customer in connection with the handling, offering for sale, sale, or distribution of such products, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution or sale of such products.

It is further ordered, That the complaint be, and it hereby is, dismissed as to Eugene Newman, individually, except to the extent that he is bound by the order against respondent Surprise as an officer, representative, agent, or employee; and, confirming and adopting the order filed January 29, 1964, by Hearing Examiner Loren H. Laughlin,

It is further ordered, That the complaint be, and it hereby is, dismissed as to respondent Samuel Dosik, now deceased.

By "Final Order" further order requiring report of compliance is as follows:

It is further ordered, That respondent Surprise Brassiere Co., Inc., shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist.

Issued: June 15, 1967.

By the Commission, Commissioner Elman dissenting.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-8549; Filed, July 24, 1967; 8:47 a.m.]

[Docket No. C-1243]

PART 13—PROHIBITED TRADE PRACTICES

Transamerican Spinning Mills, Inc., and Charles S. Weinstein

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-90 Wool Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-90 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68) [Cease and desist order, Transamerican Spinning Mills, Inc., et al., Fall River, Mass., Docket C-1243, June 30, 1967]

Consent order requiring a Fall River, Mass., manufacturer of woolen goods to cease misbranding its wool products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Transamerican Spinning Mills, Inc., a corporation, and its officers, and Charles S. Weinstein, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wood product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely or deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: June 30, 1967.

By the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-8550; Filed, July 24, 1967; 8:47 a.m.]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 67-165]

PART 11—PACKING AND STAMPING; MARKING; TRADE-MARKS AND TRADE NAMES; COPYRIGHTS

Country of Origin Marking

There was published in the FEDERAL REGISTER on February 11, 1967 (32 F.R. 2819), a notice of a proposed amendment of § 11.8(a) of the Customs Regulations. The purpose of the amendment is to prescribe a specific requirement for additional marking to avoid the possibility of misleading or deceiving the ultimate purchaser as to the origin of imported articles when the article or its container bears any inscription which could reasonably be construed to imply that the article was manufactured or produced in the United States or in a foreign country other than the country of manufacture or production. Interested persons were given an opportunity to submit relevant data, views, or arguments in writing regarding the proposed amendment. All comments received have been carefully considered. It has been decided that the word "American" on an imported article or container would be misleading unless the country of origin were clearly shown in proximity thereto, and that in some cases words other than "Made in" or "Product of" preceding the name of the country of origin may be acceptable. The proposed amendment, revised to conform with these views, is hereby adopted.

Accordingly, § 11.8 is amended by adding a sentence at the end of paragraph (a) as follows:

§ 11.8 Marking of articles and containers to indicate name of country of origin.

(a) * * * In any case in which the words "United States" or "American," the letters "U.S.A.," any variation of such words or letters, the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in proximity to such words, letters or name and in at least a comparable size, the name of the country of origin preceded by "Made in", "Product of", or other words of similar import.

* * * * *

(Sec. 304, 46 Stat. 687, as amended; 19 U.S.C. 1304)

This amendment shall become effective 30 days after its publication in the FEDERAL REGISTER.

[SEAL] LESTER D. JOHNSON, *Commissioner of Customs.*

Approved: July 13, 1967.

TRUE DAVIS, *Assistant Secretary of the Treasury.*

[F.R. Doc. 67-8566; Filed, July 24, 1967; 8:48 a.m.]

[T.D. 67-166]

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURES

Proration of Overtime Charges at Airports

A notice of proposed rule making was published in the FEDERAL REGISTER on December 9, 1966 (31 F.R. 15544). After consideration of the comments received, a second notice was published on May 17, 1967 (32 F.R. 7337). The proposals were designed to establish a standard formula for prorating among aircraft operators the charges for customs overtime services at airports under the customs overtime laws (19 U.S.C. 267, 1451) when such charges could not be readily attributed to a specific aircraft on a time basis.

After consideration of all comments received, the amendment as proposed in the notice published in the FEDERAL REGISTER on May 17, 1967, is hereby adopted, effective 30 days after publication in the FEDERAL REGISTER.

Accordingly, § 24.16(j) is amended to read:

§ 24.16 Overtime services; overtime compensation; rate of compensation.

* * * * *

(j) *Proration of charges*—(1) *General.* If services are performed for two or more applicants during one continuous tour of overtime duty, the charge for the extra compensation earned shall be prorated equitably according to the time attributed to the services performed for each applicant. For the purpose of this paragraph the Government shall be considered the applicant for nonreimbursable overtime services.

(2) *Aircraft.* When any services performed by customs employees for two or more applicants during the 24-hour period of a Sunday or holiday or during the night hours of 5 p.m. of any day to 8 a.m. of the following day cannot be readily attributed on a time basis to specific aircraft in the judgment of the district director having customs supervision of the airport, the total charge of the overtime compensation for such services during the entire period of the Sunday, holiday, or night hours shall be prorated to the aircraft receiving such services during each such period on the following basis:

(i) Five percent of such total customs overtime charge for the period shall be distributed equally among the operators of the aircraft.

(ii) Ten percent of such total customs overtime charge for the period shall be distributed among the operators of the aircraft proportionally as the number of entrances and clearances made by each aircraft operator requiring customs service bears to the total number of entrances and clearances serviced during the period.

(iii) Eighty-five percent of such total customs overtime charge for the period shall be distributed among the operators of the aircraft proportionally as the number of passengers and/or crew serviced for each aircraft operator bears to the total number of passengers and/or crew serviced during the period.

This proration formula shall apply only to overtime services rendered aircraft carrying cargo and/or passengers for hire and in no case shall the prorated charge to an aircraft operator be more than the charge would have been had the services been rendered as a separate assignment for the aircraft operator.

(Sec. 5, 36 Stat. 901, as amended, secs. 451, 624, 46 Stat. 715, as amended, 759; 19 U.S.C. 267, 1451, 1624)

[SEAL] EDWIN F. RAINS, *Acting Commissioner of Customs.*

Approved: July 13, 1967.

TRUE DAVIS, *Assistant Secretary of the Treasury.*

[F.R. Doc. 67-8565; Filed, July 24, 1967; 8:48 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 2—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart H—Delegations of Authority

APPROVED NEW-DRUG APPLICATIONS AND SUPPLEMENTS

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a)) and delegated by him to the Commissioner of Food and Drugs (21 CFR 2.120), Part 2 is amended to reflect a change in a redelegation of authority by revising § 2.121(j) (32 F.R. 712) to read as follows:

§ 2.121 Redelegations of authority from the Commissioner to other officers of the Administration.

* * * * *

(j) *Delegations regarding approved new-drug applications and approved new-drug application supplements for drugs for veterinary use.* The Director of the Bureau of Veterinary Medicine is authorized to notify applicants, pursuant to §§ 130.9 and 130.10 of this chapter, of approved new-drug applications and approved new-drug application supplements, for drugs for veterinary use.

* * * * *

Effective date. This order shall become effective on the date of signature.

(Sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a))

Dated: July 18, 1967.

JAMES L. GODDARD,
Commissioner of Food and Drugs.

[F.R. Doc. 67-8603; Filed, July 24, 1967; 8:51 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter V—Office of Foreign Assets Control, Department of the Treasury

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Miscellaneous Amendments

Section 500.515 is being amended to conform to present Foreign Assets Control policy to authorize the transfer of securities from any blocked account including a blocked account in a domestic bank to another blocked account in a domestic bank, subject to certain conditions.

Section 500.803 is amended to state for purposes of clarity that the decision of the Office of Foreign Assets Control constitutes final agency action, in lieu of the existing statement that the decision of the Foreign Assets Control is final.

Section 500.809(a) is added to adopt 31 CFR Part 1, "Disclosure of Records," which sets forth regulations governing the availability of records and documents of the adopting office. Section 500.809(b) states where FAC forms may be obtained.

1. Section 500.515 is hereby amended to read as follows:

§ 500.515 Transfers of securities to blocked accounts in domestic banks.

(a) Transactions ordinarily incident to the transfer of securities from a blocked account in the name of any person to a blocked account in the same name in a domestic bank are hereby authorized provided such securities shall not be transferred from any blocked account if such transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize the transfer of securities held in a blocked account or subaccount thereof to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

2. Section 500.803 is hereby amended to read as follows:

§ 500.803 Decision.

The Office of Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting applications filed by him. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

3. Section 500.809 is hereby added to the Foreign Assets Control Regulations:

§ 500.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations, 32 F.R. 9562, July 1, 1967.

(b) Form TFAC-1 and any other form used in connection with the Foreign Assets Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

[SEAL] MARGARET W. SCHWARTZ,
Director,
Office of Foreign Assets Control.

[F.R. Doc. 67-8569; Filed, July 24, 1967; 8:49 a.m.]

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Miscellaneous Amendments

Sections 515.508 and 515.515 are being amended to conform to present Foreign Assets Control policy which authorizes the payment or transfer of credit or securities from any blocked account, including a blocked account in a domestic bank, to another blocked account in a domestic bank, subject to certain conditions.

Section 515.803 is amended to state for purposes of clarity that the decision of the Office of Foreign Assets Control constitutes final agency action, in lieu of the existing statement that the decision of the Foreign Assets Control is final.

Section 515.804 is being amended to set forth in the description of procedures in connection with the regulations the fact that reports are required to be filed in certain instances.

Section 515.809(a) is added to adopt 31 CFR Part 1, "Disclosure of Records," which sets forth regulations governing the availability of records and documents of the adopting office. Section 515.809(b) states where FAC forms may be obtained.

1. Section 515.508 is hereby amended to read as follows:

§ 515.508 Payments to blocked accounts in domestic banks.

(a) Any payment or transfer of credit to a blocked account in a domestic bank in the name of any designated national is hereby authorized providing such payment or transfer shall not be made from any blocked account if such payment or transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize:

(1) Any payment or transfer to any blocked account held in a name other than that of the designated national who is the ultimate beneficiary of such payment or transfer; or

(2) Any foreign exchange transaction including, but not by way of limitation, any transfer of credit, or payment of an obligation, expressed in terms of the currency of any foreign country.

(c) This section does not authorize any payment or transfer of credit comprising an integral part of a transaction which cannot be effected without the subsequent issuance of a further license.

(d) This section does not authorize the crediting of the proceeds of the sale of securities held in a blocked account or a subaccount thereof, or the income derived from such securities to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

(e) This section does not authorize any payment or transfer from a blocked account in a domestic bank to a blocked account held under any name or designation which differs from the name or designation of the blocked account from which the payment or transfer is made.

2. Section 515.515 is hereby amended to read as follows:

§ 515.515 Transfers of securities to blocked accounts in domestic banks.

(a) Transactions ordinarily incident to the transfer of securities from a blocked account in the name of any person to a blocked account in the same name in a domestic bank are hereby authorized provided such securities shall not be transferred from any blocked account if such transfer represents, directly or indirectly, a transfer of the interest of a designated national to any other country or person.

(b) This section does not authorize the transfer of securities held in a blocked account or subaccount thereof to a blocked account or subaccount under any name or designation which differs from the name or designation of the specific blocked account or subaccount in which such securities were held.

3. Section 515.803 is hereby amended to read as follows:

§ 515.803 Decision.

The Office of Foreign Assets Control of the Federal Reserve Bank of New York will advise each applicant of the decision respecting applications filed by him. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

4. Section 515.804 is hereby amended to read as follows:

§ 515.804 Records and reporting.

(a) Records are required to be kept by every person engaging in any transaction subject to the provisions of this chapter, as provided in § 515.601.

(b) Reports may be required from any person with respect to any transaction subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest, as provided in § 515.602.

5. Section 515.809 is hereby added to the Cuban Assets Control Regulations:

§ 515.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by 5 U.S.C. 552 to to made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations, 32 F.R. 9562, July 1, 1967.

(b) Form TFAC–5 and any other form used in connection with the Cuban Assets Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

[SEAL] MARGARET W. SCHWARTZ,
Director,
Office of Foreign Assets Control.

[F.R. Doc. 67–8568; Filed, July 24, 1967; 8:49 a.m.]

PART 520—FOREIGN FUNDS CONTROL REGULATIONS

Miscellaneous Amendments

Section 520.803 is amended to state for purposes of clarity that the decision of the Office of Foreign Assets Control constitutes final agency action, in lieu of the existing statement that the decision of the Foreign Assets Control is final.

Section 520.804 is being amended to set forth in the description of procedures in connection with the regulations the fact that reports are required to be filed in certain instances.

Section 520.809(a) is added to adopt 31 CFR Part 1, "Disclosure of Records," which sets forth regulations governing the availability of records and documents of the adopting office. Section 520.809(b) states where FAC forms may be obtained.

1. Section 520.803 is hereby amended to read as follows:

§ 520.803 Decision.

The Office of Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting applications filed by him. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

2. Section 520.804 is hereby amended to read as follows:

§ 520.804 Records and reporting.

(a) Records are required to be kept by every person engaging in any transaction subject to the provisions of this chapter, as provided in § 520.601.

(b) Reports may be required from any person with respect to any transaction subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest, as provided in § 520.602.

3. Section 520.809 is hereby added to the Foreign Funds Control Regulations.

§ 520.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations, 32 F.R. 9562, July 1, 1967.

(b) Form TFAC–23 and any other form used in connection with the Foreign Funds Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

[SEAL] MARGARET W. SCHWARTZ,
Director,
Office of Foreign Assets Control.

[F.R. Doc. 67–8570; Filed, July 24, 1967; 8:49 a.m.]

PART 525—RHODESIAN TRANSACTION REGULATIONS

Miscellaneous Amendments

Section 525.803 is amended to state for purposes of clarity that the decision of the Office of Foreign Assets Control constitutes final agency action, in lieu of the existing statement that the decision of the Foreign Assets Control is final.

Section 525.802 is being revoked and § 525.809(a) is being added to the regulations in order to revoke old office procedures and adopt 31 CFR Part 1, "Disclosure of Records," which sets forth regulations governing the availability of records and documents of the adopting office. Section 525.809(b) states where Foreign Assets Control forms may be obtained.

1. Section 525.803 is hereby amended to read as follows:

§ 525.803 Decision.

The Office of Foreign Assets Control or the Federal Reserve Bank of New York will advise each applicant of the decision respecting applications filed by him. The decision of the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury with respect to an application shall constitute final agency action.

§ 525.802 [Revoked]

2. Section 525.802 is hereby revoked and § 525.809 is hereby added to the Rhodesian Transactioin Regulations to read as follows:

§ 525.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the Disclosure of Records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as Part 1 of this Title 31 of the Code of Federal Regulations, 32 F.R. 9562, July 1, 1967.

(b) Form TFAC–25 and any other form used in connection with the Rhodesian Transaction Regulations may be obtained in person from or by writing to

the Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045.

[SEAL] MARGARET W. SCHWARTZ,
Director,
Office of Foreign Assets Control.

[F.R. Doc. 67-8571; Filed, July 24, 1967; 8:49 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 1—GENERAL PROVISIONS

Release of Information

1. The center title immediately preceding § 1.500 is amended and a preamble is added to read as follows:

RELEASE OF INFORMATION FROM VETERANS ADMINISTRATION CLAIMANT RECORDS

NOTE: Sections 1.500 through 1.527 concern the availability and release of information from files, records, reports, and other papers and documents in Veterans Administration custody pertaining to claims under any of the laws administered by the Veterans Administration. As to the release of information from Veterans Administration records other than claimant records, see §§ 1.550 through 1.558. Sections 1.500 through 1.526 implement the provisions of 38 U.S.C. 3301, 3302.

2. In § 1.500, paragraphs (c) and (d) are added to read as follows:

§ 1.500 General.

* * * * *

(c) Each department, staff office, and field station head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of §§ 1.501 through 1.526 unless the regulations in this part currently contain such designations. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Manager or Contact Officer in the nearest Veterans Administration Regional Office or to the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m. Monday through Friday for Veterans Administration Central Office and most field stations. Any legal question arising in a field station concerning the release of information will be referred to the appropriate Chief Attorney for disposition as contemplated by §13.401 of this chapter. In Central Office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate department or staff office head.

(d) Upon denial of a request under paragraph (c) of this section, the responsible Veterans Administration official or designated employee will inform the requester in writing of the denial and advise him that he may appeal the denial. The requester will also be furnished the title and address of the Veterans Administration official to whom the appeal should be addressed. (See § 1.527.) In each instance of denial of a request, the denial will be made a matter of record and the record will contain a citation to the specific provision of Veterans Administration regulations upon which the denial is based.

3. Sections 1.501 and 1.502 are revised to read as follows:

§ 1.501 Release of information by the Administrator.

The Administrator of Veterans Affairs or the Deputy Administrator may release information, statistics, or reports to individuals or organizations when in his judgement such release would serve a useful purpose.

§ 1.502 Disclosure of the amount of monetary benefits.

The monthly rate of pension, compensation, dependency and indemnity compensation, retirement pay, subsistence allowance, or educational assistance allowance of any beneficiary shall be made known to any person who applies for such information.

4. Section 1.507 is revised to read as follows:

§ 1.507 Disclosures to Members of Congress.

Members of Congress shall be furnished in their official capacity in any case such information contained in the Veterans Administration files as may be requested for official use. However, in any unusual case, the request will be presented to the Administrator, Deputy Administrator, or staff or department head for personal action. When the requested information is of a type which may not be furnished a claimant, the Member of Congress shall be advised that the information is furnished to him confidentially in his official capacity and should be so treated by him. (See 38 U.S.C 3301.) Information concerning the beneficiary designation of a United States Government Life Insurance or National Service Life Insurance policy is deemed confidential and privileged and during the insured's lifetime shall not be disclosed to anyone other than the insured or his duly appointed fiduciary unless the insured or the fiduciary authorizes the release of such information.

5. In § 1.508, paragraph (b) is amended to read as follows:

§ 1.508 Disclosure in cases where claimants are charged with or convicted of criminal offenses.

* * * * *

(b) When desired by a U.S. district court, the Chief Attorney or the General Counsel may supply information as to whether any person charged with crime served in the military or naval service of the United States and whether the Veterans Administration has a file on such person. If the file is desired either by the court or by the prosecution or defense, it may be produced only in accord with §§ 1.501 through 1.526.

6. Sections 1.509 and 1.510 are revised to read as follows:

§ 1.509 Disclosure to courts in proceedings in the nature of an inquest.

The Chief Benefits Director, Department of Veterans Benefits, Chief Attorneys, and station heads are authorized to make disclosures to courts of competent jurisdiction of such files, records, reports, and other documents as are necessary and proper evidence in proceedings in the nature of an inquest into the mental competency of claimants and other proceedings incident to the appointment and discharge of guardians, curators, or conservators to any court having jurisdiction of such fiduciaries in all matters of appointment, discharge, or accounting in such courts.

§ 1.510 Disclosure to insurance companies cooperating with the Department of Justice in the defense of insurance suits against the United States.

Copies of records from the files of the Veterans Administration will, in the event of litigation involving commercial insurance policies issued by an insurance company cooperating with the Department of Justice in defense of insurance suits against the United States, be furnished to such companies without charge, provided the claimant or his duly authorized representative has authorized the release of the information contained in such records. If the release of information is not authorized in writing by the claimant or his duly authorized representative, information contained in the files may be furnished to such company if to withhold same would tend to permit the accomplishment of a fraud or miscarriage of justice. However, before such information may be released without the consent of the claimant, the request therefor must be accompanied by an affidavit of the representative of the insurance company, setting forth that litigation is pending, the character of the suit, and the purpose for which the information desired is to be used. If such information is to be used adversely to the claimant, the affidavit must set forth facts from which it may be determined by the General Counsel or Chief Attorney whether the furnishing of the information is necessary to prevent the perpetration of a fraud or other injustice. The averments contained in such affidavit should be considered in connection with the facts shown by the claimant's file, and, if such consideration shows the disclosure of the record is necessary and proper to prevent a fraud or other injustice, information as to the contents thereof may be furnished to the insurance company or copies of the records may be furnished to the court, workmen's compensation, or similar board in which the litigation is pending upon receipt of

a subpoena duces tecum addressed to the Administrator of Veterans Affairs, or the head of the office in which the records desired are located. In the event the subpoena requires the production of the file, as distinguished from the copies of the records, no expense to the Veterans Administration may be involved in complying therewith, and arrangements must be made with the representative of the insurance company causing the issuance of the subpoena to insure submission of the file to the court without expense to the Veterans Administration.

7. In § 1.511, paragraphs (d) and (e) are amended to read as follows:

§ 1.511 Judicial proceedings generally.

* * * * *

(d) Requests received from attorneys or others for copies of records for use in suits in which the Government is not involved, not accompanied by a subpoena or court order, will be handled by the service or division having jurisdiction over the subject matter. If the request is such as can be complied with under § 1.503 or § 1.504, the records requested will be furnished upon receipt of the required fee. If, however, the records cannot be furnished under such sections, the applicant will be advised of the procedure to obtain copies of records for court use as set forth in paragraph (c) of this section.

(e) In suits by or against the Administrator under 38 U.S.C. 1820, the files pertaining to the loan guarenteed, insured, or made by the Veterans Administration may be made available by the General Counsel or the Chief Attorney subject to the usual rules of evidence, after clearance with the Department of Justice or U.S. Attorney, if appropriate.

8. Section 1.512 is revised to read as follows:

§ 1.512 Disclosure of loan guaranty information.

In general, the facts in loan guaranty files will be made available to any party privy to a loan guaranteed, insured or made by the Veterans Administration if deemed proper by a Loan Guaranty Officer or Chief Attorney. Information in the claims folder, insurance or other file, will be released to lenders or prospective lenders only in accord with §§ 1.501 through 1.526: *Provided*, That the fact of adjudication of incompetency by court or rating board may be made known in appropriate circumstances to a lender or prospective lender.

9. In § 1.513, the headnote and paragraphs (a) and (b) (1) (iv) and (2) are amended to read as follows:

§ 1.513 Disclosure of information contained in Armed Forces service and related medical records in Veterans Administration custody.

(a) *Service records.* Information received by the Veterans Administration from the Departments of the Army, Navy, Air Force, and the Department of Transportation relative to the military or naval service of a claimant is furnished solely for the official use of the Veterans Administration, but such information may be disclosed under the limitations contained in §§ 1.501 through 1.526.

(b) *Medical records.* Information contained in the medical records (including clinical records and social data) may be released under the following conditions:

(1) * * *

(iv) The Department of Transportation (Coast Guard).

* * * * *

(2) In addition to the authorizations in subparagraph (1) of this paragraph, the Department of Justice, the Department of the Treasury, and the Post Office Department may, on request, be given pertinent information from medical records for use in connection with investigations conducted by these departments. Each such request shall be considered on its merits, and the information released should be the minimum necessary in connection with the investigation conducted by these departments.

* * * * *

10. In § 1.514(b), subparagraph (2) is amended and subparagraph (3) is added to read as follows:

§ 1.514 Disclosure to private physicians and hospitals other than Veterans Administration.

* * * * *

(b) Such information may be released without charge and without consent of the patient, his representative, or nearest relative when a request for such information is received from:

* * * * *

(2) Any fee basis physician or institution in connection with authorized treatment of the veteran as a Veterans Administration beneficiary, or

(3) Any physician or medical installation treating the veteran under emergent conditions.

11. Section 1.516 is revised to read as follows:

§ 1.516 Disclosure of information to undertaker concerning burial of a deceased veteran.

When an undertaker requests information believed by him to be necessary in connection with the burial of a deceased veteran, such as the name and address of the beneficiary of the veteran's Government insurance policy, name and address of the next of kin, rank or grade of veteran and organization in which he served, character of the veteran's discharge, or date and place of birth of the veteran, and it appears that the undertaker is holding the body awaiting receipt of the information requested, the undertaker, in such instances, may be considered the duly authorized representative of the deceased veteran for the purpose of obtaining said information. In ordinary cases, however, the undertaker will be advised that information concerning the beneficiary of a Government insurance policy is confidential and cannot be disclosed; the beneficiary will be advised immediately of the inquiry, and the furnishing of the desired information will be discretionary with the beneficiary. In no case will the undertaker be informed of the net amount due under the policy or furnished information not specifically mentioned in this section.

12. In § 1.518, paragraph (c) is amended to read as follows:

§ 1.518 Addresses of claimants.

* * * * *

(c) When an address is requested that may not be furnished under §§ 1.500 through 1.526, the person making the request will be informed that a letter, or in those cases involving judicial actions, the process or notice in judicial proceedings, enclosed in an unsealed envelope showing no return address, with the name of the addressee thereon, and bearing sufficient postage to cover mailing costs will be forwarded by the Veterans Administration. If a request indicates that judicial action is involved in which a process or notice in judicial proceedings is required to be forwarded, the Veterans Administration will inform the person who requests the forwarding of such a document that the envelope must bear sufficient postage to cover costs of mailing and certified or registered mailing fees, including cost of obtaining receipt for the certified or registered mail when transmission by this type special mail is desired. At the time the letter, process, or notice in judicial proceedings is forwarded, the station's return address will be placed on the envelope. When the receipt for certified or registered mail or the undelivered envelope is returned to the Veterans Administration, the original sender will be notified thereof: However, the receipt or the envelope will be retained by the Veterans Administration. This provision will be applicable only when it does not interfere unduly with the functions of the service or division concerned. In no event will letters be forwarded to aid in the collection of debts.

13. Section 1.523 is revoked.

§ 1.523 Veterans Administration installation from which authorized disclosure will be made. [Revoked]

14. Section 1.524 is revised to read as follows:

§ 1.524 Persons authorized to represent claimants.

A duly authorized representative will be (a) any person authorized in writing by the claimant to act for him, or (b) his legally constituted fiduciary, if the claimant is incompetent. Where for proper reasons no legally constituted fiduciary has been or will be appointed, his wife, his children, or, if the claimant is unmarried, either of his parents shall be recognized as the fiduciary of the claimant.

15. In § 1.525, paragraphs (a) (1) and (b) (5) and (6) are amended to read as follows:

§ 1.525 Inspection of records by or disclosure of information to recognized representatives of organizations.

(a) (1) The accredited representatives of any of the organizations recognized

under 38 U.S.C. 3402 holding appropriate power of attorney may, subject to the restrictions imposed by subparagraph (2) of this paragraph, inspect the claims, insurance and allied folders of any claimant upon the condition that only such information contained therein as may be properly disclosed under §§ 1.500 through 1.526 will be disclosed by him to the claimant or, if the claimant is incompetent, to his legally constituted fiduciary. Under the same restrictions, it is permissible to release information from and permit inspection of loan guaranty folders in which a request for a waiver of the debt of a veteran or his spouse has been received, or where there has been a denial of basic eligibility for loan guaranty benefits. All other information in the files shall be treated as confidential and will be used only in determining the status of the cases inspected or in connection with the presentation to officials of the Veterans Administration of the claim of the claimant. The heads of field stations and the directors of the services concerned in Central Office will each designate a responsible officer to whom requests for all files must be made, except that managers of centers with insurance activities will designate two responsible officials, recommended by the division chiefs concerned, one responsible for claims and allied folders and the other for insurance files. The term "claimant" as used in this paragraph includes insureds.

* * * * *

(b) * * *

(5) Under no circumstances shall any paper be removed from a file, except by a Veterans Administration employee, for purpose of having an authorized copy made. Copying of material in a file shall not be permitted except in connection with the performance of authorized functions under the power of attorney.

(6) In any case involving litigation against the Government, whether contemplated or initiated, inspection, subject to the foregoing, shall be within the discretion of the General Counsel or Chief Attorney, except that in insurance suits under 38 U.S.C. 775, 784, inspection shall be within the discretion of the official having jurisdiction of the claim. Files in such cases may be released to the Department of Justice, but close liaison will be maintained to insure their return intact upon termination of the litigation.

* * * * *

16. In § 1.526, paragraphs (b), (e), (g), (i), (j), and (k) are amended to read as follows:

§ 1.526 Copies of records and papers.

* * * * *

(b) The types of services provided by the Veterans Administration for which a schedule of fees is established in paragraph (i) of this section are (1) copying, (2) certification, (3) search and (4) handling of files under court subpoena.

* * * * *

(e) The following are circumstances under which services may be provided free at the discretion of station heads or responsible Central Office officials:

(1) When requested by a court, when the copy will serve as a substitute for personal court appearance of a Government witness.

(2) When furnishing the service free saves costs or yields income equal to the direct costs of the agency providing the service. This includes cases where the fee for the service would be included in a billing against the Government (for example, in cost-type contracts, or in the case of private physicians who are treating Government beneficiaries at Government expense).

(3) To the extent of one copy, to those who require copies of records or information from the records in order to obtain financial or other benefits to which they may be entitled.

(4) When a service is occasional and incidental, not of a type that is requested often, and if it is administratively determined that a fee would be inappropriate in such an occasional case.

* * * * *

(g) In those cases where it is determined that a fee shall be charged, the applicant will be advised to deposit the amount of the lawful charge for the copy desired. The amount of such charge will be determined in accordance with the schedule of fees prescribed in paragraph (i) of this section. The desired copy will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposited over the lawful charge will be returned to the applicant. When a deposit is received with an application, such a deposit will be returned to the applicant should the application be denied.

* * * * *

(i) Schedule of fees:

(1) Typewritten pages, each page or fraction thereof	$1.50
(2) Photocopy reproductions from all types of copying processes. Each reproduced page	.25
(3) Certification	.25
Seal, including certification	.50
(4) Searching, per hour (minimum charge one-half hour)	2.50
(5) Abstracts or copies of medical and dental records which are furnished by Veterans Administration hospitals and outpatient clinics to insurance companies. Per request	3.00
(6) Office handling of files under court subpoena.—(i) When the file is in the office served with the subpoena	3.00
(ii) When the file must be shipped from a different geographical area to the office served with the subpoena	10.00

(j) If the copy is to be transmitted by certified or registered mail, airmail, or special delivery mail, the postal fees therefor shall be added to the other fees provided in paragraph (i) of this section (or the order must include postage stamps or stamped return envelopes for the purpose).

(k) Those Veterans Administration installations not having copying equipment are authorized to arrange with the nearest Veterans Administration installation having such equipment to make the necessary authorized copies of records or documents.

* * * * *

17. Section 1.527 is added to read as follows:

§ 1.527 Administrative review.

(a) Any person may, in the event of a denial of his request to inspect or obtain information from or copies of records within the purview of §§ 1.501 through 1.526, appeal such denial. Such appeal, stating the circumstances of the denial, should be addressed, as appropriate, to the field station, department, or staff office head.

(b) A denial action not reversed by a field station, department, or staff office head on appeal, will be referred through normal channels to the Administrator.

(c) The final agency decision in such appeals will be made by the Administrator or the Deputy Administrator.

18. Sections 1.550 through 1.558 are added to read as follows:

RELEASE OF INFORMATION FROM VETERANS ADMINISTRATION RECORDS OTHER THAN CLAIMANT RECORDS

NOTE: Sections 1.550 through 1.558 concern the availability and release of information from files, records, reports, and other papers and documents in Veterans Administration custody other than those pertaining to claims under any of the laws administered by the Veterans Administration. As to the release of information from Veterans Administration claimant records, see §§ 1.500 through 1.527. Section 1.550 series implement the provisions of 5 U.S.C. 552.

§ 1.550 General.

The Veterans Administration's policy is one of disclosure of information from agency records to the extent permitted by law. This includes the release of information which the Veterans Administration is authorized to withhold under 5 U.S.C. 552(b) (see § 1.554) if it is determined (a) by the Administrator of Veterans Affairs or the Deputy Administrator that disclosure of such information will serve a useful purpose or (b) by a department, staff office, or field station head or his designee under § 1.556(a) that disclosure will not adversely affect the proper conduct of official business or constitute an invasion of personal privacy.

§ 1.551 Publication in the Federal Register as constructive notice of information that affects the public.

(a) The Assistant Administrator for Management Engineering and Evaluation, with the approval of the Administrator, will submit to the Director of the Federal Register, for publication for the guidance of the public, descriptions of Veterans Administration organization and functional responsibilities, Central Office and field, and the designations of places at which the public may secure information, obtain forms and applications, make submittals or requests, or obtain decisions. Such descriptions and designations will be maintained current through submission, for publication, of

all amendments, revisions, or repeals of the foregoing.

(b) Department and staff office heads will develop, with the approval of the Administrator, for submission by the Assistant Administrator for Management Engineering and Evaluation to the Director of the Federal Register, for publication for the guidance of the public, Veterans Administration regulations containing:

(1) Statements of the general course and method by which Veterans Administration functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(2) Rules of procedure and instructions as to the scope and contents of all papers, reports, or examinations.

(3) Substantive rules of general applicability adopted by the Veterans Administration as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Veterans Administration.

(4) Every amendment, revision, or repeal of the foregoing.

(c) Except to the extent that a person has actual and timely notice of the terms thereof, no person shall in any manner be required to resort to, or be adversely affected by any matter required by this section to be published in the FEDERAL REGISTER and not so published.

§ 1.552 Public access to information that affects the public when not published in the Federal Register as constructive notice.

(a) All final orders in such actions as entertained by the Board of Contract Appeals, those statements of policy and interpretations adopted by the Veterans Administration but not published in the FEDERAL REGISTER, and administrative manuals and staff instructions that affect any member of the public, unless promptly published and copies offered for sale, will be indexed. Both the index and the materials indexed as required by this paragraph will be made available to the public, for inspection and copying. Public reading facilities for this purpose will be maintained in Veterans Administration Central Office and Veterans Administration field stations, open to the public during the normal duty hours of the office in which located. Orders made in the adjudication of individual claims under laws administered by the Veterans Administration are confidential and privileged by statute (38 U.S.C. 3301) and so are exempt from this requirement.

(b) The voting records of the Board of Contract Appeals will be maintained in a public reading facility in the Office of the Board in Central Office and made available to the public upon request.

(c) When publishing or making available to the public any opinion, order, statement of policy, interpretation, staff manual or instruction to staff, identifying details will be deleted, and the deletion justified in writing, to the extent required to prevent a clearly unwarranted invasion of personal privacy.

(d) No final order, opinion, statement of policy, interpretation, staff manual or instruction which is issued, adopted, or promulgated after July 4, 1967, that affects any member of the public may be relied upon, used, or cited as precedent against any private party unless it has been indexed and either made available or published as provided in this section or unless that private party shall have actual and timely notice of the terms thereof.

§ 1.553 Public access to other identifiable records.

Identifiable records in Veterans Administration custody, or copies thereof, other than records made available to the public under the provisions of §§ 1.551 and 1.552, will be made promptly available, except as provided in § 1.554, to any person upon request. Such request must be in writing, over the signature of the requester and must contain a reasonably specific description of the record desired so that it may be located with relative ease. The request should be made to the office concerned (having jurisdiction of the record desired) or, if not known, to the Manager or Contact Officer in the nearest Veterans Administration Regional Office or to the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, D.C. 20420. Personal contacts should normally be made during the regular duty hours of the office concerned, which are 8 a.m. to 4:30 p.m. Monday through Friday for Veterans Administration Central Office and most field stations.

§ 1.554 Exemptions from public access to agency records.

(a) The exemptions in subparagraphs (1) through (9) of this paragraph constitute authority to withhold from disclosure certain categories of information in Veterans Administration records.

(1) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy.

(2) Related solely to internal Veterans Administration personnel rules and practices.

(3) Specifically exempted from disclosure by statute (see §§ 1.500 through 1.527).

(4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential.

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Veterans Administration.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party.

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) Geological and geophysical information and data (including maps) concerning wells.

(b) Information in the categories exempted under paragraph (a) of this section, other than in subparagraph (3) which is applicable to Veterans Administration claimant records, will be released only as authorized in § 1.550. The release of information from Veterans Administration claimant records will be made only in accordance with §§ 1.501 through 1.526.

§ 1.555 Fees.

(a) Charges will not be made for the use of reading facilities for examination of materials which are to be available to the public under § 1.552. Charges will be made, except as provided in paragraphs (c), (d), and (e) of this section, in accordance with the schedule of fees in § 1.526, to recover the costs of duplicating, reproducing, certifying or authenticating copies of such materials in response to requests from the public. The desired copy will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposited over the lawful charge will be returned .

(b) Charges will be made, except as provided in paragraphs (c), (d), and (e) of this section, on each request from the public to examine, copy, or to be furnished copies of other identifiable records under § 1.553. Such charges, in accordance with the schedule of fees in § 1.526, will be made to recover direct and indirect costs for searching requested records and, if requested, reproducing copies and certifying or authenticating them. Searches will not be undertaken until the requester has paid, or has provided sufficient assurance that he will pay, whatever fee is determined to be appropriate. Desired copies will not be delivered, except under court subpoena, until the full amount of the lawful charge is deposited. Any excess deposited over the lawful charge will be returned. When a deposit is received with a request, such a deposit will be returned if the request is denied.

(c) Where a contract with a reporting service requires that copies of transcripts be sold only by the service, the copy in Veterans Administration's possession may be made available for inspection. If a copy is requested, the requester will be referred to the reporting service.

(d) No charges will be made when services are rendered to or for other agencies or branches of the Federal Government, or State and local governments. When information, statistics, or reports are approved by the Administrator or the Deputy Administrator for release under § 1.550, the fee charge, if any, will be determined upon the merits of each individual application.

(e) Under the following circumstances services may be provided free at the discretion of station heads or responsible Central Office officials:

(1) When requested by press, radio, television, or other information representatives for dissemination to the general public.

(2) When furnishing the service free is in conformance with generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees.

(3) To the extent of one copy, to those who require copies of records or information from the records in order to obtain financial or other benefits to which they may be entitled (e.g., employees with workmen's compensation claims).

(4) To an individual directly concerned in a hearing or other formal proceeding involving security requirements for Federal employment, one copy of any transcript made of such hearing or other proceeding.

§ 1.556 Requests for other identifiable records.

(a) Each department, staff office, and field station head will designate an employee(s) who will be responsible for initial action on (granting or denying) requests to inspect or obtain information from or copies of records under their jurisdiction and within the purview of § 1.553. Any legal question arising in a field station concerning the release of information will be referred to the appropriate Chief Attorney for disposition as contemplated by § 13.401 of this chapter. In Central Office such legal questions will be referred to the General Counsel. Any administrative question will be referred through administrative channels to the appropriate department or staff office head.

(b) Upon denial of a request, the responsible Veterans Administration official or designated employee will inform the requester in writing of the denial and advise him that he may appeal the denial. The requester will also be furnished the title and address of the Veterans Administration official to whom the appeal should be addressed. (See § 1.557.)

(c) The disposition of each request will be made a matter of record. For each denial of a request, the record will contain a citation to the specific provision of Veterans Administration regulations upon which the denial is based.

§ 1.557 Administrative review.

(a) Any person may, in the event of a denial of his request for information from identifiable agency records subject to release under § 1.553, appeal such denial. Such appeal, stating the circumstances of the denial, should be addressed, as appropriate, to the filed station, department, or staff office head.

(b) A denial action not reversed by field station, department, or staff office head on appeal, will be referred through normal channels to the Administrator.

(c) The final agency decision in such appeals will be made by the Administrator or Deputy Administrator.

§ 1.558 Judicial review.

Any person from whom the Veterans Administration has withheld information or records after proper request as provided in § 1.553 may file a complaint in the appropriate United States district court as provided in 5 U.S.C. 552(a)(3). The district court review is designed to follow final action at the agency head level.

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective July 4, 1967.

Approved: July 20, 1967.

By direction of the Administrator.

[SEAL] A. H. MONK,
Acting Deputy Administrator.

[F.R. Doc. 67-8614; Filed, July 24, 1967; 8:52 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

PART 1-12—LABOR

Subpart 1-12.2—Convict Labor

APPLICABILITY OF CONVICT LABOR CLAUSE

This amendment of the Federal Procurement Regulations revises the provisions of Subpart 1-12.2, Convict Labor, for the purpose of clarifying the applicability of the Convict Labor clause to the employment of Federal prisoners. As revised, the subpart now provides that the clause does not prohibit the employment of Federal prisoners authorized by the Attorney General to work at paid employment during their term of confinement.

The introductory text of § 1-12.202 is amended to read as follows:

§ 1-12.202 Applicability.

The requirement set forth in § 1-12.201 applies, except as stated in this § 1-12.202, to all contracts involving the employment of labor within the United States. The requirement does not prohibit the employment of persons on parole or probation, Federal prisoners authorized by the Attorney General under 18 U.S.C. 4082(c)(2) to work at paid employment during the term of their imprisonment, or persons who have been pardoned or who have served their terms. Furthermore, the requirement does not apply to contracts:

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. These regulations are effective upon publication in the FEDERAL REGISTER.

Dated: July 19, 1967.

LAWSON B. KNOTT, Jr.,
Administrator of General Services.

[F.R. Doc. 67-8519; Filed, July 24, 1967; 8:45 a.m.]

Title 45—PUBLIC WELFARE

Subtitle A—Department of Health, Education, and Welfare, General Administration

PART 55—INTERCHANGE OF PERSONNEL WITH STATES

Sec.
55.1 Definitions.
55.2 Purpose and coverage.
55.3 Assignments of personnel.
55.4 Initiation of proposals.
55.5 Duration of assignment.
55.6 Nature and type of assignment.
55.7 Personnel provisions.
55.8 Modification of agreement.
55.9 Termination of agreement.
55.10 Reports and evaluation.

AUTHORITY: The provisions of this Part 55 issued under sec. 314, 58 Stat. 693, as amended by 80 Stat. 1180, 1189, 42 U.S.C. sec. 246(f)(9). Interpret or apply sec. 314(f), 58 Stat. 698, as amended by sec. 3, 80 Stat. 1181, 42 U.S.C. sec. 246(f).

§ 55.1 Definitions.

As used in this part:

(a) "Act" means the Public Health Service Act (amended by the Comprehensive Health Planning and Public Health Services Amendments of 1966; P.L. 89-749, 80 Stat. 1180).

(b) "Secretary" means (except when used in § 55.7(b)(6), (c)(2), and (d)(3)) the Secretary of Health, Education, and Welfare, or his delegatee.

(c) "Department" means the Department of Health, Education, and Welfare.

(d) "State" includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, and the Virgin Islands.

(e) "State agency" means a State or a political subdivision of a State, or any agency of either (including State or local health or health planning agencies), engaged in any activities related to health or designated or established pursuant to section 314(a)(2)(A) of the Act.

(f) "Officers and employees" means officers of the Commissioned Corps of the Public Health Service and all civilian officers and employees of the Department in either the excepted or competitive service.

(g) "Commissioned Officer" means an officer, Regular Corps or Reserve Corps, serving on active duty, in the Commissioned Corps of the Public Health Service (i.e., officers appointed pursuant to section 203 of the Act (42 U.S.C. sec. 204)).

§ 55.2 Purpose and coverage.

(a) *Authority for assignment.* Under section 314(f) of the Act, the Secretary is authorized, through agreements or otherwise, to arrange for assignment of officers and employees of States to the Department and assignment of officers and employees of the Department engaged in work related to health to States, for work which the Secretary determines will aid the Department in more effectively discharging its responsibilities in the field of health as authorized by law,

including cooperation with States and the provision of technical or other assistance. Such arrangements will be made by the Secretary in accordance with the provisions of section 314(f) of the Act, the regulations in this part, and any conditions and procedures which the Secretary finds necessary to carry out the purpose of the Act and the regulations in this part.

(b) *Department's responsibilities in the field of health.* "The Department's responsibilities in the field of health" are promotion of normal physical and mental development and well-being, and repair or containment of the effects of injuries and diseases, including rehabilitation of persons affected by disease or injury, development of basic scientific knowledge about the life processes and the nature of disease, augmentation of health resources and improvement of the utilization of these resources, control of environmental hazards and consumable products, and improvement of the quality and availability of health services. Activities in these areas may be focused on individuals, families, groups of people, communities, regions, or the population at large.

(c) *Work related to health.* "Work related to health" means any work which contributes to carrying out the Department's responsibilities in the field of health.

§ 55.3 Assignments of personnel.

Assignments of personnel between the Department and a State agency may include (a) assignments to the State agency of one or more officers or employees of the Department either considered to be on detail to a regular work assignment in the Department or on leave without pay from positions in the Department, (b) assignments to the Department of one or more officers or employees of the State agency either with or without appointment in the Department, or (c) interchanges of personnel involving any combination of paragraphs (a) and (b) of this section.

§ 55.4 Initiation of proposals.

A proposal for an assignment of personnel between the Department and a State agency may be made by either the Secretary or the State agency.

(a) *Department proposals.* When the Secretary desires to effect with a State agency the assignment of personnel under section 314(f) of the Act, he will propose an arrangement for that purpose to the appropriate State agency. Upon acceptance of the proposal by the State agency, the Secretary and the State agency will enter into an agreement which meets the requirements of section 314(f) of the Act and the regulations in this part.

(b) *State proposals.* A State agency desiring the assignment of personnel under section 314(f) of the Act shall submit a proposal for an arrangement for that purpose in such manner as may be prescribed by the Secretary. Information on making such proposals may be obtained from the Department. The Secretary will notify the State agency in writing of his acceptance or rejection of the proposal. If he rejects the proposal submitted by the State agency, but modifications would make the proposal acceptable, he may suggest such modifications. If the proposal is accepted by the Department, the Secretary and the State agency will enter into an agreement which meets the requirements of section 314(f) of the Act and the regulations in this part.

§ 55.5 Duration of assignment.

Each agreement between the Department and a State agency for an assignment of personnel shall indicate the period of assignment of each officer or employee covered by the agreement. Such a period of assignment shall not exceed 2 years but may be extended or renewed for new 2-year periods.

§ 55.6 Nature and type of assignment.

Each agreement between the Department and a State agency for assignment of personnel shall indicate the type and describe the nature of the assignment of each officer or employee covered under the arrangement. Specifically, the agreement shall (a) indicate whether the officer or employee of the Department will be on detail to a regular work assignment in the Department or on leave without pay from his position in the Department, or whether the officer or employee of the State agency will be given an appointment in the Department or assigned to the Department without appointment; (b) describe the duties and responsibilities of the officer or employee while on his assignment; and (c) include the position title of the person responsible for the supervision of the officer or employee while on the assignment.

§ 55.7 Personnel provisions.

(a) *Department personnel on detail to State agency.* Each agreement for assignment to a State agency of an officer or employee of the Department on detail to a regular work assignment in the Department shall contain provisions with respect to compensation and allowances, travel and transportation expenses, and employee benefits which are consistent with his remaining an officer or employee of the Department. Such an agreement may provide that the compensation, travel and transportation expenses, and allowances (or any part thereof) of the officer or employee will be reimbursed by the State, including travel directed by a State.

(b) *Department personnel on leave without pay.* Each agreement for assignment to a State agency of an officer or employee of the Department on leave without pay from his position in the Department shall, in accordance with section 314(f) of the Act, contain provisions with respect to the following matters:

(1) Payment by the State of Compensation (including allowances) of the officer or employee during the period of assignment, which may include provisions for supplementary salary payments from the Department not in excess of the amount by which the Department rate of compensation (including allowances) exceeds the State rate of compensation (including allowances) and the agreement may also contain provisions for reimbursement by the State for such supplementary compensation;

(2) Payment by the Department of the expenses of travel of the officer or employee and transportation of his immediate family, household goods and personal effects to and from his initial place of assignment, which may include provisions for reimbursement by the State for such expenses;

(3) Payment by the State, under State law and implementing regulations and policies, of travel and transportation expenses incurred as a result of travel directed by the State;

(4) Entitlement to annual and sick leave to the extent authorized by Federal law if that officer or employee were not on leave without pay, but only in circumstances considered by the Secretary to justify approval of such leave;

(5) Coverage under Chapter 87 (life insurance), Chapter 89 (health insurance), and Chapter 83 (retirement) of Title 5 of the United States Code, including the collection and deposit into the respective Federal funds of all necessary contributions and the election of either benefits available under those provisions or similar benefits available through employment in the State agency;

(6) Coverage under Chapter 81 (compensation for work injuries) of Title 5 of the United States Code, except that the officer or employee so assigned (or his dependents in case of death) may elect either benefits available under that provision or similar benefits available through employment in the State agency for injury or death (such election shall be made within 1 year after the injury or death, or such further time as the Secretary of Labor may for good cause allow, and when made shall be irrevocable unless otherwise provided by law); and

(7) Crediting of the period of assignment toward eligibility for Periodic Step Increases under the provision of Chapter 53, Subchapter III of Title 5 of the United States Code and for retention and leave accural purposes under the provisions of Chapter 63, Subchapter I of Title 5, United States Code;

(8) The receipt of credit by a Commissioned Officer for his services while so detailed for pay, promotion, retirement, Social Security, and other purposes as an officer of the Uniformed Services of the United States;

(9) Entitlement of Commissioned Officers and/or their dependents and beneficiaries to medical care, commissary and post exchange privileges and other benefits as members of the Uniformed Services of the United States;

(10) The Federal program which will pay (with or without reimbursement by the State) monetary benefits to which the survivors of an officer or employee are entitled upon death (e.g., in the case of a Commissioned Officer, 6 months pay death gratuity, travel of dependents to a home of selection, shipment of household goods, transportation of remains to place of burial, transportation for escort to accompany remains, burial allowance, etc.).

(c) *State personnel without appointment to Department.* Each agreement for the assignment to the Department of an officer or employee of the State agency without appointment shall contain provisions with respect to compensation and allowances, travel and transportation expenses, and employee benefits which are consistent with his remaining an officer or employee of the State agency, except that, in accordance with section 314(f) of the Act, provisions shall be contained in the agreement with respect to the following matters:

(1) Payment by the Department of expenses of travel of the officer or employee (but not expenses of transportation of his immediate family, household goods, and personal effects) to and from the place of assignment or during the period of assignment;

(2) Coverage under the compensation for work injuries provision of Chapter 81 of Title 5, United States Code, except that the officer or employee so assigned (or his dependents in case of death) may elect either the benefits under that provision or benefits available through employment in the State agency for injury or death (such election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may for good cause allow, and when made shall be irrevocable unless otherwise provided by law).

(d) *State personnel with appointment to Department.* Each agreement for appointment to the Department of an officer or employee of the State agency for the period of assignment shall, in accordance with section 314(f) of the Act, contain provisions with respect to the following matters:

(1) Payment by the Department of compensation in accordance with position classification provisions of Chapter 51 of Title 5, United States Code, and allowances as authorized by Federal law;

(2) Payment by the Department of expenses of travel of the officer or employee (but not expenses of transportation of his immediate family, household goods, and personal effects) to and from the place of assignment and during the period of assignment;

(3) Coverage under the compensation for work injuries provision of Chapter 81 of Title 5, United States Code, except that the officer or employee so appointed (or his dependents in case of death) may elect either the benefits under that provision or benefits available through employment in the State agency for injury or death (such election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may for good cause allow, and when made shall be irrevocable unless otherwise provided by law);

(4) Exclusion of the officer or employee from coverage under the retirement provision of Chapter 83 of Title 5, United States Code, and the life insurance provision of Chapter 87 of Title 5, United States Code;

(5) Coverage under the health insurance provision of Chapter 89 of Title 5, United States Code, but only if appointment to the Department results in the loss of coverage in a group health benefits plan whose premium has been paid in whole or in part by a contribution of the State agency.

(e) *General provisions.* (1) Notwithstanding any other provision in this section, sections 203, 205, 207, 208 and 209 of Title 18 of the United States Code, relating to conflicts of interest, shall apply to all officers or employees on assignment pursuant to section 314(f) of the Act;

(2) Each agreement for the assignment of an officer or employee shall provide that the policies of both the Department and the State agency governing the standards of conduct of their personnel shall apply to the officer or employee assigned under the agreement; and, if any such policies conflict, the agreement shall include mutually acceptable provisions indicating which policies in the areas of conflict will prevail;

(3) Each such agreement for the assignment of an officer or employee shall provide that the rules and policies of the Department or State agency receiving the officer or employee on assignment with respect to the internal operation and management of the receiving agency (for example, hours of duty, building rules, and operating procedures) shall govern the employment and conduct of such employee or officer except as otherwise provided in the agreement through mutual consent;

(4) Each agreement for the assignment of an officer or employee may contain any other provisions not in violation of the Act or the regulations in this part which the Department or State agency finds necessary to carry out the assignment provided for therein and which are mutually acceptable.

§ 55.8 Modification of agreement.

Each agreement for an assignment of personnel between the Department and a State agency may be shortened, extended, or otherwise modified upon the mutual agreement of both parties. Such modifications shall be in accordance with section 314(f) of the Act and the regulations in this part.

§ 55.9 Termination of agreement.

Each agreement for an assignment of personnel between the Department and a State agency may be terminated by mutual consent or upon 60 days' notice in writing by either party of its intention to terminate the agreement.

§ 55.10 Reports and evaluation.

The parties to each agreement shall adopt such procedures and make such reports as the Secretary may find necessary for the evaluation of the progress of assignments under the agreement in light of the purpose stated in section 314(f)(2) of the Act and § 55.2. Such procedures and reports shall include, but not be limited to, (a) periodic consultations between the Department and the State agency, (b) exchange of reports, and (c) maintenance of records supporting such reports and mutual access thereto.

Effective date. This part shall become effective immediately.

Dated: July 12, 1967.

[SEAL] WILBUR J. COHEN,
Acting Secretary.

[F.R. Doc. 67-8603; Filed, July 24, 1967; 8:51 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[RM-1134; FCC 67-858]

PART 15—RADIO FREQUENCY DEVICES

Radiation Interference Limits

Order. 1. Section 15.63(c) of Part 15 of the Commission's rules provides, that for television receivers, the level of radio frequency radiation in the band 470–1000 Mc/s is increased from 500 uV/m to 1000 uV/m at 100 feet on a temporary basis until April 30, 1967. The Electronic Industries Association (EIA) has submitted a petition, RM-1134, requesting that this temporary increase be extended for a further period of 2 years until April 30, 1969.[1] Radiation in the band of frequencies 470–1000 Mc/s concerned here is that radiation which is liable to cause harmful interference to radio operations. This petition in no way relates to X-ray radiation or to the levels of radiation of X-rays.

2. EIA urges that before TV receiver manufacturers can reliably assure compliance with the desired specifications of 500 uV/m at 100 feet, a high degree of correlation between measurements must be obtained. In a "round robin" series of measurements on a group of television receivers, the correlation found between measurement sites is regarded by EIA as inadequate. EIA anticipates that adequate correlation may be achieved by use of a new antenna recently developed at the FCC Laboratory.

3. Although the Commission feels there is a need to reduce receiver radiation as part of the over all program to improve the efficiency of spectrum utilization, it recognizes merit in the EIA argument, and is amending Part 15 pursuant to EIA's request.

4. Since the amendment adopted herein relieves an existing restriction, it is found that compliance with the provisions of section 4 of the Administrative Procedure Act as to notice, public procedure, and effective date is not necessary.

5. *It is ordered,* That, pursuant to authority contained in sections 4(i), 301, 303(f), and 303(r) of the Communications Act of 1934, as amended, the EIA petition, RM-1134, is granted and effective, July 28, 1967, § 15.63 of Part 15 is amended as follows:

§ 15.63 Radiation interference limits.

* * * * *

[1] To permit the orderly consideration of the petition, on May 1, 1967, the temporary limit was extended to July 31, 1967.

(c) For television broadcast receivers the limit 500 uV/m is temporarily increased to 1000 uV/m until April 30, 1969.

(Secs. 4, 301, 303, 47 Stat., as amended, 1066, 1081, 1082; 47 U.S.C. 154, 301, 303)

Adopted: July 19, 1967.

Released: July 20, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[3]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 67-8593; Filed, July 24, 1967; 8:50 a.m.]

[FCC 67-844]

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Volume of Domestic Telegraph Messages

Order. In the matter of the amendment of § 64.221(a) of Subpart B of Part 64 of the Commission's rules and regulations governing domestic telegraph speed of service studies.

The Commission having under consideration a letter dated May 25, 1967, from The Western Union Telegraph Co. submitting the biennial traffic load study required by § 64.221(c) of the Commission's rules and regulations, which was adopted for the purpose of determining such revision by the Commission, as may be warranted, in the list of 75 cities at which speed of telegraph service studies are required to be made by Part 64 of the Commission's rules;

It appearing, that the cities presently specified in § 64.221(a) of the Commission's rules and regulations were last revised, effective January 1, 1966, and were selected on the basis of the 75 cities in the Western Union system handling the largest volume of terminating messages;

It further appearing, that according to traffic data submitted by Western Union, on the basis of the average weekly received trunk load for the year ending April 29, 1967, Bridgeport, Conn.; Jackson, Miss.; Raleigh, N.C.; and Wilmington, Del., non-FCC reporting cities, currently handle a larger volume of terminating messages than Mobile, Ala.; Palo Alto, Calif.; Shreveport, La.; and Tucson, Ariz., FCC reporting cities;

It further appearing, that revision of the list of cities on the basis of the traffic data submitted by the telegraph company would reflect the 75 cities handling the largest volume of terminating traffic;

It further appearing that Western Union is the only person subject to the amended rule adopted herein; that Western Union has agreed to such amended rule and the effective date thereof; and hence, that compliance with the public notice, procedural and effective date requirements of section 4 of the Administrative Procedure Act is unnecessary:

It is ordered, That pursuant to sections 4(i), 201(b) and 218 of the Communications Act of 1934, as amended, § 64.221(a) of Subpart B of Part 64 is amended, effective September 1, 1967, in the following respects:

Section 64.221(a) is amended by deleting Mobile, Ala.; Palo Alto, Calif.; Shreveport, La.; and Tucson, Ariz.; from the list of cities specified therein and inserting in said list in alphabetical order Bridgeport, Conn.; Jackson, Miss.; Raleigh, N.C.; and Wilmington, Del.

(Secs. 4, 201, 218, 48 Stat., as amended, 1066, 1070, 1077; 47 U.S.C. 154, 201, 218)

Adopted: July 19, 1967.

Released: July 20, 1967.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 67-8592; Filed, July 24, 1967; 8:50 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

[General Order 95, Rev., Amdt. 2]

PART 293—INVENTORIES OF VESSELS COVERED BY OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

Miscellaneous Amendments

Effective upon date of publication in the FEDERAL REGISTER, §§ 293.8 and 293.9 of this part are revised as follows:

1. Amend § 293.8 by deleting the existing heading and text and substituting therefor a new heading and text reading as follows:

§ 293.8 Waiver of inventory requirements.

The requirements for the taking of inventories as provided in § 293.3 may be waived by the Maritime Administrator whenever in his judgment it shall be determined that the rights of the United States will not be adversely affected thereby and that the taking of such inventories will serve no useful purpose.

2. Amend § 293.9 by changing the heading and text thereof to read as follows:

§ 293.9 Conflict of orders, effective date.

(a) To the extent that provisions of this part are in conflict with provisions of any regulations or instructions now in effect, the provisions of this part shall prevail.

(b) The provisions of this part are effective as of the date of publication in the FEDERAL REGISTER and are applicable to all inventories in process as of such date of publication.

By order of the Acting Maritime Administrator.

Dated: July 20, 1967.

JAMES S. DAWSON, Jr., *Secretary.*

[F.R. Doc. 67-8577; Filed, July 24, 1967; 8:49 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

MISCELLANEOUS AMENDMENTS TO CHAPTER

Title 50 of the Code of Federal Regulations is amended as follows:

PART 1—DEFINITIONS

1. Chapter I, Subchapter A, Part 1 is amended by adding a section number to the table of contents to read:

Sec.
1.11 Migratory birds.

2. Part 1 is amended by adding a new § 1.11 which reads as follows:

§ 1.11 Migratory birds.

(a) Migratory game birds are:

(1) Anatidae (wild ducks, geese, brant, and swans);

(2) Charadriidae (plovers, turnstones, killdeer, and surfbirds);

(3) Columbidae (wild doves and pigeons);

(4) Gruidae (little brown, sandhill, and whooping cranes);

(5) Haematopodidae (oystercatchers);

(6) Phalaropodidae (phalaropes);

(7) Rallidae (rails, including sora, coots, and gallinules);

(8) Recurvirostridae (avocets and stilts); and

(9) Scolopacidae (sandpipers, curlews, yellowlegs, knots, dowitchers, godwits, willets, woodcock, snipe, and sanderlings).

(b) Migratory nongame birds are:

(1) Alaudidae (horned larks);

(2) Alcidae (auks, auklets, murres, murrelets, puffins, guillemots, and dovekies);

(3) Apodidae (Micropodidae) (swifts);

(4) Ardeidae (herons, bitterns, and egrets);

(5) Bombycillidae (waxwings);

(6) Caprimulgidae (whip-poor-wills, poor-wills, night-hawks, chuck-will's-widows, and pauraques);

(7) Certhiidae (brown creepers);

(8) Cinclus mexicanus (dipper, water ouzel);

(9) Cuculidae (cuckoos, anis, and roadrunners);

(10) Fringillidae (cardinals, grosbeaks, buntings, finches, sparrows, tow-

[3] Commissioners Bartley and Loevinger absent; joint dissenting statement of Commissioners Cox and Johnson filed as part of original document.

[1] Commissioners Bartley and Loevinger absent.

hees, juncos, crossbills, dickcissels, and long-spurs);
(11) Gaviidae (loons);
(12) Hirundinidae (swallows and martins);
(13) Hydrobatidae (petrels);
(14) Icteridae (bobolinks, meadowlarks, orioles, grackles, blackbirds, and cowbirds);
(15) Laniidae (shrikes);
(16) Laridae (gulls, terns, and kittiwakes);
(17) Mimidae (mockingbirds, catbirds, and thrashers);
(18) Motacillidae (pitpits and wagtails);
(19) Paridae (titmice, chickadees, bushtits, and verdins);
(20) Parulidae (Compsothlypidae) (warblers, ovenbirds, water thrushes, chats, and redstarts);
(21) Picidae (woodpeckers, flickers, and sapsuckers);
(22) Podicipedidae (grebes);
(23) Procellariidae (shearwaters and fulmars);
(24) Ptilogonatidae (phainopeplas);
(25) Sittidae (nuthatches);
(26) Stercorariidae (skuas and jaegers);
(27) Sulidae (gannets and boobies);
(28) Sylviidae (kinglets and gnatcatchers);
(29) Thraupidae (tanagers);
(30) Trochilidae (hummingbirds);
(31) Troglodytidae (wrens);
(32) Turdidae (robins, thrushes, bluebirds, solitaires, and wheatears);
(33) Tyrannidae (tyrant flycatchers, king birds, pewees, and phoebes); and
(34) Vireonidae (vireos).

PART 13—IMPORTATION OF WILDLIFE OR EGGS THEREOF

§ 13.1 [Amended]

3. Section 13.1(d)(2) of this subchapter is amended to read: "(2) belong to one of the families of birds listed under § 1.11 of Subchapter A of this chapter,".

PART 14—IMPORTATION OF FEATHERS OF WILD BIRDS

PART 15—TRANSPORTATION OF GAME MAMMALS TO AND FROM MEXICO

PART 16—MIGRATORY BIRD PERMITS

4. Parts 13, 14, 15, and 16 of Chapter I of this title are amended by striking the words "Collector of Customs" wherever they appear and inserting in lieu thereof the words "District Director of Customs."

5. Subchapter B, § 16.1(a) is amended to read:

§ 16.1 Meaning of terms.

* * * * *

(a) "Migratory birds" refers to all those species of birds defined as migratory birds under § 1.11 of Subchapter A of this chapter, and includes all birds of these species which, whether raised in captivity or not, cannot be readily and visibly distinguished by general size or coloration from birds of the same species occurring in a wild state.

* * * * *

(5 U.S.C. 22; 62 Stat. 687, 18 U.S.C. 42; 77A Stat. 29, 19 U.S.C. 1202 (Sch. 1, pt. 4E, hdnote 1) 39 Stat. 1702; 50 Stat. 1311; 40 Stat. 755; 16 U.S.C. 703 et seq.)

Since these changes impose no new restrictions and are not substantive changes of regulations, 30 days notice and public procedure have been deemed unnecessary and these amendments will become effective upon publication in the FEDERAL REGISTER.

RAYMOND E. JOHNSON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

JULY 19, 1967.

[F.R. Doc. 67-8551; Filed, July 24, 1967; 8:47 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Parts 32, 33]

SAN LUIS NATIONAL WILDLIFE REFUGE, CALIF.

Hunting and Fishing

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222; 16 U.S.C. 715), and the Endangered Species Preservation Act of October 15, 1966 (80 Stat. 926, 16 U.S.C. 668aa), it is proposed to amend 50 CFR 32.11, 32.21, and 33.4 by the addition of San Luis National Wildlife Refuge, Calif., to the list of areas open to the hunting of migratory game birds and upland game, and to the list of areas open to sport fishing.

It has been determined that sport fishing and the regulated hunting of upland game and migratory game birds may be permitted as designated on San Luis National Wildlife Refuge, Calif., without detriment to the objectives for which the area was established.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections, with respect to this proposed amendment, to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, within 30 days of the date of publication of this notice in the FEDERAL REGISTER.

1. Section 32.11 is amended by the addition of the following area as one where hunting of migratory game birds is authorized:

§ 32.11 List of open areas; migratory game birds.

* * * * *

CALIFORNIA

* * * * *

San Luis National Wildlife Refuge.

* * * * *

2. Section 32.21 is amended by the addition of the following area as one where hunting of upland game is authorized.

§ 32.21 List of open areas; upland game.

* * * * *

CALIFORNIA

* * * * *

San Luis National Wildlife Refuge.

* * * * *

3. Section 33.4 is amended by the addition of the following area as one where sport fishing is authorized:

§ 33.4 List of open areas; sport fishing.

* * * * *

CALIFORNIA

* * * * *

San Luis National Wildlife Refuge.

* * * * *

RAYMOND E. JOHNSON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

JULY 19, 1967.

[F.R. Doc. 67-8552; Filed, July 24, 1967; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 1006]

[Docket No. AO 356-A2]

MILK IN UPPER FLORIDA MARKETING AREA

Notice of Extension of Time for Filing Exceptions to Recommended Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Florida marketing area, which was issued June 22, 1967 (32 F.R. 9096), is hereby further extended to August 1, 1967.

Signed at Washington, D.C., on July 20, 1967.

CLARENCE H. GIRARD,
Deputy Administrator, Regulatory Programs.

[F.R. Doc. 67-8609; Filed, July 24, 1967; 8:52 a.m.]

[7 CFR Parts 1012, 1013]

[Docket Nos. AO 347-A6, AO 386-A13]

MILK IN TAMPA BAY AND SOUTHEASTERN FLORIDA MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Tampa and Miami, Fla., on April 28 and May 1, 1967, pursuant to notices thereof issued on March 15, 1967 (32 F.R. 4313), and on March 28, 1967 (32 F.R. 5472).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on June 22, 1967 (32 F.R. 9097; F.R. Doc. 67-7197), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision (32 F.R. 9097; F.R. Doc. 67-7197) are hereby approved and adopted and are set forth in full herein subject to the following modifications:

In the discussion on the Class I price:

1. The second paragraph is deleted and two new paragraphs are substituted therefor;

2. The 17th and 18th paragraphs are deleted and three new paragraphs are substituted therefor;

3. The last sentence in the 23d paragraph is changed; and

4. The 26th paragraph is deleted and four new paragraphs are substituted therefor.

The material issues on the record of the hearing relate to:

1. The Class I price;

2. Shrinkage allowance for producer milk;

3. Classification of milk moved to nonpool plants; and

4. Need for emergency action on Issue 3.

This decision deals with Issues 1 and 2. Issues 3 and 4 were dealt with in a separate decision issued May 18, 1967 (32 F.R. 7596) and resulted in amendments to the Southeastern Florida order effective June 1, 1967 (32 F.R. 7742).

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *The Class I price.* The Southeastern Florida and Tampa Bay Class I prices through June 1968 should be computed by adding $3.20 and $3, respectively, to a basic formula price (Minnesota-Wisconsin manufacturing milk price series). Such prices should be subject to a common supply-demand adjustor based on the relationship of producer milk supplies and Class I sales under the Southeastern Florida, Tampa Bay and Upper Florida orders.

At the time of the hearing, the Southeastern Florida and Tampa Bay Class I

price provisions were due to expire June 30, 1967. This was the end of the 18-month period for which the Tampa Bay Class I price was initially provided when the order was promulgated. This expiration date was set also for the Southeastern Florida order when its Class I price provisions were amended in December 1966. It was therefore necessary that Class I prices to be effective after June 1967 be established for the two markets.

The recommended decision proposed pricing provisions for the two orders for the period of July 1967 through June 1968. The time remaining after the issuance of the recommended decision precluded the completion of the amendatory procedures by July 1, however, and the June 30, 1967, expiration date was suspended June 27, 1967 (32 F.R. 9300), to provide interim pricing for July 1967. Therefore, the period of pricing under consideration in this decision is limited to the months of August 1967 through June 1968.

Producers supplying about 75 percent of the milk in each market proposed that Class I price provisions be established for a 1-year period ending June 30, 1968. This date coincides with the end of the 18-month pricing period initially provided under the Upper Florida order. Before that date, as proposed by producers, a single hearing would be held to consider the Class I prices for all three Florida orders to be effective July 1, 1968.

Producers proposed Class I differentials of $3 and $3.20 for the Tampa Bay and Southeastern Florida orders, respectively, to be added to a basic formula price (Minnesota-Wisconsin price series). For computing Class I prices through April 1968, however, they proposed that the basic formula price be not less than $4.05.

Producers proposed also that the Class I price under the Southeastern Florida and Tampa Bay orders be subject to a supply-demand adjustment based on the relationship of the production and Class I sales for these markets and the Upper Florida order market for the most recent 3-month period. Although the same supply-demand formula would be used, a separate adjustment would be computed for each of the two markets by giving a weight of two to the production and sales figures for the market for which the price adjustment is being computed, and a weight of one to the figures for the other markets. The norm for computing the supply-demand adjustment would be a percentage based on the production and sales relationship under the Southeastern Florida order only for the years 1963 through 1966. A monthly adjustment would be made on the basis of any difference between the norm and the ratio of production to sales in the most recent 3-month period. As proposed by producers, the supply-demand adjustment would be made in units of 10 cents and would be limited to a maximum of plus or minus 30 cents.

Producers further proposed that a contraseasonal price provision be used in each order. The Class I price for April, May, and June would not be higher than the average Class I price for the preceding January, February, and March. Similarly, Class I prices for August through November would not be lower than the average Class I price for the preceding May, June, and July.

Handlers objected primarily to the method proposed by producers for computing the supply-demand adjustment. They argued that production-sales data for only the Tampa Bay and Southeastern Florida markets, without the double weighting of individual market data, should be used; and that any supply-demand adjustor adopted should employ production-sales data for a recent 12-month period rather than a 3-month period.

The Tampa Bay order now provides that $3 be added to a basic formula price (Minnesota-Wisconsin price series) to determine the Class I price. However, such price may not be higher than the Southeastern Florida Class I price for the same month. Some changes in the Class I price formula have been made since the inception of the order by the emergency actions of the Department on a national basis. Included in these changes was the establishment of minimum basic formula prices to be used in computing the Class I prices for July 1966 through July 1967. For the most recent 12 months for which data are available, July 1966–June 1967, the Tampa Bay Class I price averaged $7.17.[1]

The Southeastern Florida Class I price for July 1966–June 1967 averaged $7.30. For July through November 1966, the Southeastern Florida Class I price was determined by adding $3.20 to a basic formula price (Minnesota-Wisconsin price series). For these 5 months, a minimum basic formula price was effective as a result of the previously mentioned emergency actions of the Department. For December 1966 through June 1967, the Class I price was fixed at $7.25.

Southeastern Florida order producer receipts in 1966 (44.6 million pounds monthly) approximated those in 1965 (44.2 million pounds). Production in 1967, however, has been higher than a year ago. Average monthly producer deliveries of 49.2 million pounds in January–May 1967 were 5.9 percent more than the 46.5-million pound average in the same months in 1966.

Average monthly Class I sales of producer milk by Southeastern Florida handlers were 1.4 percent higher in 1966 (39.3 million pounds) than in 1965 (38.8 million pounds. In January–May 1967, average monthly Class I sales increased 3.5 percent over a year ago, from 41.2 million pounds to 42.7 million pounds. The Class I utilization of producer milk was 87 percent in January–May 1967 and 89 percent a year earlier.

Monthly producer receipts in the Tampa Bay market averaged 38.3 million pounds in January–May 1967 and 32.3 million pounds a year ago, an increase of 18.3 percent. These are the only months for which a comparison can be made for the newer order. Average monthly Class I sales of producer milk by Tampa Bay handlers in January–May 1967 declined 2.7 percent, from 27.9 to 27.0 million pounds, compared with last year. Of the total producer milk in January–May 1967, 71 percent was Class I, compared with 86 percent for the same months in 1966.

On the basis of the foregoing data, it it apparent that the current Class I prices for the Southeastern Florida and Tampa Bay orders have encouraged an adequate supply of milk for both markets. The relatively large increase in producer deliveries relative to Class I requirements in the Tampa Bay market in recent months (and the lesser increase in the Southeastern Florida market) raises the question of whether excessive supplies are being encouraged. It cannot be concluded at this time, however, that the current supply-demand relationship is indicative of what may be expected in the next 12 months.

Producers contended that the increased production in recent months relative to the needs of the market does not represent a trend. Instead, they stated it is a situation that will be corrected by the producers themselves as the lower Class I utilization continues to be reflected in the blend price returned to producers. As a further incentive, however, producers urged the adoption of the supply-demand adjustor proposed by them as a means of discouraging unneeded production.

Tampa Bay and Southeastern Florida Class I prices through June 1968 determined by adding differentials of $3 and $3.20, respectively, to the basic formula price were supported by both producers and handlers. The differentials, which have recently been applicable in the two markets, should, in conjunction with the supply-demand provisions herein proposed, tend to encourage an adequate but not excessive supply of milk for the two markets.

Although the Upper Florida Class I price is not under consideration in this hearing, recognition must be given to the prices that will prevail under that order through June 1968 in establishing Class I prices for the Tampa Bay and Southeastern Florida orders. The Class I price under the Upper Florida order is the Minnesota-Wisconsin price plus $2.80 in the northern part of the market (Jacksonville and Tallahassee areas) and $2.90 in the southern part (Orlando area). Inclusion in the Southeastern Florida and Tampa Bay orders of the proposed Class I differentials and a basic formula price based on the Minnesota-Wisconsin price series will maintain an appropriate relationship of prices between the Southeastern Florida, Tampa Bay, and Upper Florida markets.

The minimum basic formula price of $4.05 proposed at the hearing by producers for computing Class I prices through April 1968 should not be adopted. The

[1] Official notice is taken of the "Official Class Price Announcement" and "Market Statistics" issued in May and June 1967 for the Tampa Bay and Southeastern Florida markets.

floor price extending into 1968 was incorporated May 1, 1967, in all Federal orders outside Florida that use the Minnesota-Wisconsin price in computing the Class I price. Producers contended that it likewise should be used in the Southeastern Florida and Tampa Bay orders. Handlers objected to the use of the floor price.

Producers did not show any need for utilizing a minimum basic formula price through April 1968. The Upper Florida order market is closely associated with the Southeastern Florida and Tampa Bay markets in both supply and sales. The proposed minimum basic formula price of $4.05 proposed to be applicable through April 1968 is not provided for in the Upper Florida order. To incorporate it in the other two Florida orders at this time could create a misalignment of Class I prices in the Florida order markets. In addition, it could result in diminishing the effect of the supply-demand provisions that are found by this decision to be appropriate for the Tampa Bay and Southeastern Florida orders.

The recommended decision proposed that in view of similar pricing under the Upper Florida order, the $4.05 floor price be used in the Southeastern Florida and Tampa Bay orders for computing the Class I price for July 1967 only. Because the pricing provisions proposed by this decision will not be applicable in July 1967, the amendatory language contained in the recommended decision regarding the basic formula price provisions is not included in the attached orders. Amendments that would remove obsolete language in those provisions are included, however.

As indicated, the Class I price under each order should be subject to a supply-demand adjustment. On the basis of the present marketing conditions, it is anticipated that the proposed fixed differential over a basic formula price will encourage an adequate supply of milk for fluid use in each market. However, changes may occur in the supply-sales relationship which warrant a change in the Class I price level. When milk supplies are more than adequate in relation to Class I sales, the Class I price should be lowered. Conversely, when supplies are less than adequate, the Class I price should be increased. A supply-demand adjustor will make price adjustments promptly and automatically without the need for a public hearing each time a price adjustment is warranted.

Such price adjustments are consistent with the criteria of the Agricultural Marketing Agreement Act which requires that the prices established under the Act be reasonable in view of market supply and demand conditions, assure a sufficient quantity of pure and wholesome milk, and be in the public interest. The supply-demand adjustor set forth in the attached order is designed to carry out the price objectives of the Act through encouragement of supplies at the levels needed for fluid requirements.

The supply-demand adjustor proposed herein:

(1) Bases the "normal" relationship of supplies to Class I sales on the production-sales data for the Southeastern Florida market for 1965 and 1966;

(2) Bases price adjustments on the change in the "current" supply-demand relationship from the "normal" relationship. The current relationship would be determined using producer receipts and Class I sales in the most recent 3-month period for the Southeastern Florida, Tampa Bay, and Upper Florida markets combined;

(3) Limits any monthly changes in the price adjustment to 10 cents and the maximum adjustment to plus or minus 30 cents; and

(4) Applies the same adjustment to the Southeastern Florida and the Tampa Bay Class I prices.

The "normal" supply-demand relationship against which current changes in the three markets are to be measured is based essentially on the 1965–66 producer receipts and Class I sales of producer milk of regulated handlers in the Southeastern Florida market. These data (and similar data for November and December 1964) were used to compute 3-month average ratios of producer receipts to Class I sales. From these ratios, minimum, and maximum "standard utilization percentages" were determined. These percentages are set forth in the following table:

Month for which price is being computed	Standard utilization percentage	
	Minimum	Maximum
January	110	114
February	110	114
March	109	113
April	109	113
May	109	113
June	109	113
July	113	117
August	118	122
September	120	124
October	119	123
November	114	118
December	111	115

While the Tampa Bay order has been in effect since January 1966, production-sales data that may be considered representative of a normal supply-demand relationship in that market are not available for use in constructing standard utilization percentages. The Upper Florida order did not become effective until a year later and sufficient production-sales data thus are not available. The similarity of production and sales factors in all three markets, however, makes the use of Southeastern Florida data alone, as proposed by producers, appropriate for the pricing period under consideration.

The use of the most recent 2-years' data in determining the normal supply-demand relationship will provide an appropriate standard against which supply-demand changes in the three markets may be measured. The annual relationship of production to Class I sales of producer milk was virtually the same for these 2 years. For 1965 and 1966, producer receipts in the Southeastern Florida market averaged 114.7 percent and 114.2 percent, respectively, of the producer milk classified in Class I. Also, the seasonal patterns of supplies relative to sales were similar in both years. The average of the minimum-maximum standard percentages derived from the 1965–66 data is 112.6–116.6, with a midpoint of 114.6. This represents approximately the same supply-demand relationship proposed by producers and by handlers, and is indicative of an adequate but not excessive supply of milk for the Southeastern Florida and Tampa Bay markets relative to their Class I needs.

The proposed adjustor provides that a "current utilization percentage" be determined by dividing the total hundredweight of producer milk under the Southeastern Florida, Tampa Bay, and Upper Florida orders for the 3-month period ending with the second month preceding the pricing month by the total hundredweight of producer milk classified in Class I under the three orders in this period. The deviation of the current utilization percentage from the minimum or maximum standard utilization percentages is the basis for any price adjustments. The adjustment would be 3 cents for each percent of deviation, but could not vary from that for the previous month by more than 10 cents. The maximum adjustment of the Class I price due to the supply-demand adjustor would be limited through June 1968 to plus or minus 30 cents.

The supply-demand adjustment should be based on the quantity of producer milk classified in Class I instead of on handlers' "gross Class I utilization" as proposed by producers. The proposed gross Class I utilization includes the aggregate Class I classification of regulated handlers irrespective of the source of milk thus classified. It includes, for example, as a Class I disposition by a Southeastern Florida handler the transfer of Class I milk to a Tampa Bay or Upper Florida order plant. The same milk would likewise be classified as a Class I disposition from the plant of the Tampa Bay or Upper Florida plant.

Since the receipts and utilization of handlers under all three Florida order markets would be used in computing the supply-demand adjustment, there would be a duplication of Class I classification because of interorder transfers. Using the gross Class I utilization as proposed would thus overstate the total Class I utilization. Neither the record of hearing nor the official releases of the market administrator contain information relative to such interorder transfers.

There is no indication that price adjustments resulting from the supply-demand adjustor proposed herein would differ from price adjustments based on gross Class I utilization proposed by producers. For each of the months of January through May 1967, there was virtually no difference under any Florida order in the ratios of producer deliveries to producer milk in Class I and producer deliveries to regulated handlers' gross Class I utilization. With the rapidly increasing production in Florida relative to Class I needs, it can reasonably be expected that the requirements of milk

from nonproducer sources will be of no significance in the immediate future. In the Southeastern Florida market, for example, no milk was received from nonpool sources at pool plants in February 1967. The 2.3 million pounds of such receipts at pool plants in February 1966 was 37 percent of the total receipts of such milk for the year. A similar situation existed in the Tampa Bay market.

As previously stated, Class I prices established under the Act must be such as to encourage a sufficient quantity of pure and wholesome milk for the market. Producers regularly supplying the market are the most dependable source for such milk. The Class I price thus should be set at the level that tends to encourage the necessary production response by these producers relative to the market's need for fluid milk. It necessarily follows that changes in the Class I price level resulting from a supply-demand adjustor should be in response to a change in the demand for milk from the producers regularly supplying the market.

Utilizing the ratio of producer deliveries to producer milk in Class I in a supply-demand adjustor will best assure that changes in the demand for producer milk will result in changes in the Class I price. If, for example, handlers used other source milk for Class I purposes and then chose to rely instead on producer milk, the demand for producer milk for fluid use would increase. A supply-demand adjustor using data reflecting producer milk in Class I would translate this increased demand for producer milk into a higher Class I price. An adjustor utilizing the ratio of producer deliveries to gross Class I sales would not, however, cause a price increase in this situation since the relationship of gross Class I sales and producer deliveries would not have changed. Conversely, the replacement of producer milk with other source milk for fluid use would mean a lesser demand for producer milk. A supply-demand adjustor utilizing the ratio of producer deliveries to producer milk in Class I would translate this lesser demand for producer milk into a lower Class I price.

The use of production-sales data for all three markets in computing the current utilization percentage recognizes the close relationship of these markets. There is a significant overlap of the procurement areas for all three markets. Milk supplies may be shifted easily between these markets, either by handlers or by cooperative associations. Four of the major handlers in the State have distributing plants regulated under all three orders. The distribution of Class I milk likewise can be easily shifted from one market to another.

In computing the current utilization percentage, equal weight should be given to the supply-sales data for each of the three markets and, for the period through June 1968, the same supply-demand adjustment should apply to the Tampa Bay and Southeastern Florida Class I prices. As proposed by producers, double weight would be given to the data for an individual market in calculating price adjustments for that market. Thus, a market having a substantially greater change in the supply-demand relationship relative to the other market could have a greater price adjustment than the other market.

The idea embodied in a supply-demand adjustor that reflects changes in supplies relative to sales both in the local market and in a larger area of which the local market is a part has particular merit where there is a substantial overlap between sales or production areas of several markets in a region and where supplies and sales can be shifted easily among the several markets. Through the use of the "double" adjustor, each market's Class I price would be adjusted in response to changes in the over-all availability of milk supplies in the region relative to the total demand. This would recognize the interrelationship of the several markets in the region. At the same time, each market's Class I price would be adjusted by changes in the supply-sales relationship in the local market to encourage the desired supply-demand balance for the individual market. While the "double" adjustor is not incorporated in the Class I price provisions for the limited period proposed herein (through June 1968), favorable consideration may appropriately be given to such a supply-demand formula when more data for all three Florida markets are available and supply-demand formulas for the three markets are under consideration.

The current supply-demand relationship should be based on the production and sales data for a 3-month period rather than for a 12-month period as advocated by handlers. By using data for the most recent 3-month period, the supply-demand adjustor will be sufficiently responsive to current supply-demand conditions in the markets to indicate promptly the desired changes in production relative to Class I sales. Three months will be an adequate length of time, on the other hand, to minimize price adjustments that might be caused by temporary or erratic changes in supplies relative to sales.

The most current 3-month period should comprise the three months ending with the second month preceding the month for which the Class I price is being computed. The 1-month lag is necessary to allow the supply-demand adjustment to be calculated in time for the Class I price to be announced by the 5th day of the month as the orders now require.

Handlers were particularly concerned that a supply-demand adjustor might cause undue fluctuations in the Class I prices. On the other hand, the adjustor must be constructed so that changes in the supply-sales relationship will be adequately reflected in the Class I price to induce the desired production response. This is especially relevant in view of the relatively large quantity of producer milk in the three Florida markets (126.4 million pounds in May 1967).*

* Official notice is taken of "Market Statistics" for Upper Florida issued in the months of February through June 1967.

The 5-point range in the monthly minimum-maximum standard utilization percentages incorporated in the proposed adjustor will allow minor changes in the supply-demand relationship without a corresponding change in price. Also, the 10-cent limit on any monthly change in the the price adjustment will remove the possibility of violent changes in the Class I price as a result of the supply-demand adjustor.

Price adjustments of 3 cents for each percent of deviation of the current supply-demand relationship from the normal relationship will achieve the price response desired by producers, who proposed a 10-cent adjustment for each bracket of 2 percent deviation. This arrangement will result in the supply-demand adjustor reflecting more closely the changes in the production-sales relationship than would the producers' proposal. Also, less drastic price changes would result.

A maximum price adjustment of plus or minus 30 cents is necessary to maintain within a reasonable limit the difference between the Southeastern Florida and Tampa Bay Class I prices and the Upper Florida Class I price through June 1968.

Because the Upper Florida order has been fully effective only since January 1967, price adjustments resulting from the proposed supply-demand adjustor can be determined from available data only for May, June, and July 1967. Disregarding the applicable limits proposed herein, the price adjustments that would have been computed for the individual months are —21 cents, —33 cents, and —30 cents, respectively. Under the proposed limits, however, the supply-demand adjustment is limited to 10 cents in the first month the pricing provisions become effective. The maximum 30-cent limit cannot be reached until the third month in which the amended order is effective.

The contraseasonal price provisions proposed by producers should not be adopted in conjunction with the supply-demand formula herein proposed. Such provisions could nullify the effect of the supply-demand adjustor in these markets. If supplies relative to sales are such as to warrant a price adjustment, this should be reflected promptly in the Class I price. Contraseasonal pricing could preclude this from happening.

The Class I price provisions of the Upper Florida order will expire June 30, 1968. It will be necessary, therefore, to establish a Class I price to be effective after that date. To assure proper alignment of prices between all three Florida orders, it is desirable that the Class I price provisions of each order be reviewed at the same time. Thus, the Tampa Bay and Southeastern Florida prices proposed herein should be effective only through June 1968.

2. *Shrinkage allowance for producer milk.* The maximum allowable shrinkage in Class III of producer milk received at a pool plant should be continued at 2 percent of such receipts under both orders. The shrinkage provisions should

be modified, however, so that the same classification treatment will be accorded milk received from producer members of a cooperative as is accorded milk received at a pool plant from nonmember producers.

The orders now provide a maximum allowable shrinkage in Class III of 2 percent of producer deliveries on milk received at a pool plant from producer members of a cooperative for which the cooperative is the handler. This 2 percent is allowed, however, only if the pool plant operator is purchasing the milk on the basis of farm weights. Otherwise, the maximum allowable Class III shrinkage to the pool plant operator is 1.5 percent.

With respect to milk received at a pool plant from a producer who is not a member of a cooperative association, a maximum shrinkage allowance in Class III of 2 percent of the producer milk is allowed. No differentiation is made on the basis of whether or not such milk is paid for on the basis of farm weights.

The change herein proposed, and which was requested by producers, would provide for the same treatment with respect to shrinkage allowances on producer deliveries to a pool plant whether such deliveries were from the farm of a cooperative member or a nonmember producer.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreements and orders. Annexed hereto and made a part hereof are four documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Tampa Bay Marketing Area," "Order Amending the Order Regulating the Handling of Milk in the Tampa Bay Marketing Area," "Marketing Agreement Regulating the Handling of Milk in the Southeastern Florida Marketing Area," and "Order Amending the Order Regulating the Handling of Milk in the Southeastern Florida Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the attached orders which will be published with this decision.

Determination of representative period. The month of May 1967 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Tampa Bay and Southeastern Florida marketing areas, are approved or favored by producers, as defined under the terms of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing areas.

Signed at Washington, D.C., on July 19, 1967.

GEORGE L. MEHREN,
Assistant Secretary.

Order[1] *Amending the Order Regulating the Handling of Milk in the Tampa Bay Marketing Area*

§ 1012.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Tampa Bay marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Tampa Bay marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on June

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

22, 1967, and published in the FEDERAL REGISTER on June 27, 1967 (32 F.R. 9097; F.R. Doc. 67-7197), shall be and are the terms and provisions of this order and are set forth in full herein except that § 1012.50 is changed:

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. In § 1012.41(c), subparagraph (5) is revised to read as follows:

§ 1012.41 Classes of utilization.

* * * * *

(c) * * *

(5) Skim milk and butterfat, respectively, in shrinkage at each pool plant (except in milk diverted to a nonpool plant pursuant to § 1012.16) but not in excess of:

(i) Two percent of producer milk (including that received from a handler pursuant to § 1012.13(d)) if the handler receiving such milk files notice with the market administrator that he is purchasing it on the basis of farm weights. Otherwise, the applicable percentage pursuant to this subdivision shall be 1.5 percent;

(ii) Plus 1.5 percent of bulk fluid milk products received from other pool plants;

(iii) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III utilization was requested by the operators of both plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II or Class III utilization was requested by the handler; and

(v) Less 1.5 percent of bulk fluid milk products transferred to other plants; and

* * * * *

§ 1012.50 [Amended]

2. In § 1012.50, the last sentence is deleted.

3. In § 1012.51, paragraph (a) is revised to read as follows:

§ 1012.51 Class prices.

* * * * *

(a) *Class I price.* From the effective date of this order through June 1968, the Class I price shall be the basic formula price for the preceding month plus $3, and plus or minus a supply-demand adjustment of not more than 30 cents, computed as follows:

(1) Determine the total hundredweight of producer milk pursuant to this part and Parts 1013 (Southeastern Florida) and 1006 (Upper Florida) of this chapter for the 3-month period ending with the second preceding month;

(2) Determine the total hundredweight of producer milk classified as Class I pursuant to this part and Parts 1013 and 1006 of this chapter for the 3-month period ending with the second preceding month;

(3) Determine the "current utilization percentage" by calculating the percentage, rounded to the nearest full percent, that the amount obtained in subparagraph (1) of this paragraph is of the amount obtained in subparagraph (2) of this paragraph; and

(4) Add or subtract 3 cents for each percent that the current utilization percentage is, respectively, below the minimum or above the maximum standard utilization percentages for the month in the following table: *Provided,* That such adjustment shall not vary from that for the preceding month by more than 10 cents:

Month for which price is being computed	Standard utilization percentage	
	Minimum	Maximum
January	110	114
February	110	114
March	109	113
April	109	113
May	109	113
June	109	113
July	113	117
August	118	122
September	120	124
October	119	123
November	114	118
December	111	115

* * * * *

Order[1] Amending the Order Regulating the Handling of Milk in the Southeastern Florida Marketing Area

§ 1013.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Southeastern Florida marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date thereof, the handling of milk in the Southeastern Florida marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on June 22, 1967, and published in the FEDERAL REGISTER on June 27, 1967 (32 F.R. 9097; F.R. Doc. 67-7197), shall be and are the terms and provisions of this order and are set forth in full herein except that §§ 1013.50 and 1013.51(a)(2) are changed:

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

1. In § 1013.41(c), subparagraph (5) is revised to read as follows:

§ 1013.41 Classes of utilization.

* * * * *

(c) * * *

(5) Skim milk and butterfat, respectively, in shrinkage at each pool plant (except in milk diverted to a nonpool plant pursuant to § 1013.16) but not in excess of:

(i) Two percent of producer milk (including that received from a handler pursuant to § 1013.13(d)) if the handler receiving such milk files notice with the market administrator that he is purchasing it on the basis of farm weights. Otherwise, the applicable percentage pursuant to this subdivision shall be 1.5 percent;

(ii) Plus 1.5 percent of bulk fluid milk products received from other pool plants;

(iii) Plus 1.5 percent of bulk fluid milk products received from other order plants exclusive of the quantity for which Class II or Class III utilization was requested by the operators of both plants;

(iv) Plus 1.5 percent of bulk fluid milk products received from unregulated supply plants exclusive of the quantity for which Class II or Class III utilization was requested by the handler; and

(v) Less 1.5 percent of bulk fluid milk products transferred to other plants; and

* * * * *

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

§ 1013.50 [Amended]

2. In § 1013.50, the last sentence is deleted.

3. In § 1013.51, paragraph (a) is revised to read as follows:

§ 1013.51 Class prices.

* * * * *

(a) *Class I price.* From the effective date of this order through June 1968, the Class I price shall be the basic formula price for the preceding month plus $3.20, and plus or minus a supply-demand adjustment of not more than 30 cents, computed as follows:

(1) Determine the total hundredweight of producer milk pursuant to this part and Parts 1012 (Tampa Bay) and 1006 (Upper Florida) of this chapter for the 3-month period ending with the second preceding month;

(2) Determine the total hundredweight of producer milk classified as Class I pursuant to this part and Parts 1012 and 1006 of this chapter for the 3-month period ending with the second preceding month;

(3) Determine the "current utilization percentage" by calculating the percentage, rounded to the nearest full percent, that the amount obtained in subparagraph (1) of this paragraph is of the amount obtained in subparagraph (2) of this paragraph; and

(4) Add or subtract 3 cents for each percent that the current utilization percentage is, respectively, below the minimum or above the maximum standard utilization percentages for the month in the following table: *Provided*, That such adjustment shall not vary from that for the preceding month by more than 10 cents:

Month for which price is being computed	Standard utilization percentage	
	Minimum	Maximum
January	110	114
February	110	114
March	109	113
April	109	113
May	109	113
June	109	113
July	113	117
August	118	122
September	120	124
October	119	123
November	114	118
December	111	115

* * * * *

[F.R. Doc. 67-8587; Filed, July 24, 1967; 8:46 a.m.]

[7 CFR Part 1068]

MILK IN MINNEAPOLIS-ST. PAUL, MINN., MARKETING AREA

Notice of Proposed Suspension of Certain Provision of Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of a certain provision of the order regulating the handling of milk in the Minneapolis-St. Paul, Minn., marketing area is being considered for an indefinite period.

The provision proposed to be suspended is "not less than 30 percent of the total" as it appears in the second proviso of § 1068.9(b), relating to standards required to qualify a cooperative supply plant for pool status.

This suspension has been requested by the Twin City Milk Producers Association, representing the majority of producers on the market. The request is supported by seven other cooperatives. Petitioner requests that this provision be suspended for an indefinite period (pending a hearing on the matter) to reflect the changed milk marketing conditions in this market. The suspension will permit them to continue marketing and pooling milk regularly associated with the market on the most efficient and economical basis.

The suspension would permit all the milk of producer members of a cooperative association which is shipped directly from the farm to bottling plants located in the cities of Minneapolis or St. Paul to be assigned to country plants operated by such association for the purpose of meeting the shipping requirements of a pool supply plant during August, September, and October. The order presently provides that at least 30 percent of the member milk must be direct-shipped to plants in Minneapolis or St. Paul before any of it may be assigned to country plants for this purpose.

A continuing trend during recent years in the shift of sales from home delivery to stores has caused a shift also in the day-to-day demand for milk supplies by distributing plants. High volume purchases are now made by milk dealers on only about three days of the week, making it necessary for association plants to carry additional reserves to meet peak demands. Further, a relocation of a receiver of association direct-shipped milk to a location outside the city of St. Paul has eliminated one outlet for association milk so moved. These changes are now making it difficult for the association to meet the 30 percent direct-delivery requirement which they need in order to qualify certain of their supply plants for pool status. The association contends that without the suspension continuing pool status for certain of their supply plants cannot be assured unless they resort to uneconomical back-hauling of a portion of their milk delivered to city plants to country plants for reloading and transporting to other distributors, at a consequent additional cost to their producers.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file the same with the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 3 days from the date of publication of this notice in the FEDERAL REGISTER. All documents filed should be in quadruplicate.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Signed at Washington, D.C., on July 21, 1967.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 67-8606; Filed, July 24, 1967; 8:52 a.m.]

[7 CFR Part 1125]

[Docket No. AO 236-A18]

MILK IN PUGET SOUND, WASH., MARKETING AREA

Rescheduled Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice was issued July 17, 1967, giving notice of a public hearing to be held at the Banquet Hall, Norway Center (Norselander Restaurant), 300 Third Avenue West, Seattle, Wash., beginning at 9:30 a.m., local time, on July 27, 1967, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Puget Sound, Wash., marketing area.

Notice is hereby given that the said public hearing is rescheduled to be held on August 15, 1967. The location of the hearing and its scheduled time are not changed.

Signed at Washington, D.C., on July 20, 1967.

CLARENCE H. GIRARD,
Deputy Administrator,
Regulatory Programs.

[F.R. Doc. 67-8574; Filed, July 24, 1967; 8:52 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 23, 91]

[Docket No. 8287; Notice 67-32]

SPIRAL STABILITY AND STALL DETERRENT DEVICES FOR SMALL AIRPLANES

Advance Notice of Proposed Rule Making

The Federal Aviation Administration is considering rule making to require spiral stability and stall deterrent devices on all small airplanes type certificated under Part 23 of the Federal Aviation Regulations.

This advance notice of proposed rule making is being issued in accordance with the FAA's policy for the early institution of public rule-making proceedings. An advance notice is issued when it would be helpful to invite public participation in the identification and selection of a course or alternate courses of action with respect to a particular rule-making problem.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. All communications received on or before November 22, 1967, will be considered by the Administrator before taking action upon the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. If it is determined to be in the public interest to proceed further, after consideration of the available data and comments received in response to this notice, a notice of proposed rule making will be issued.

Spiral stability. The FAA is concerned over the number of accidents with small airplanes in which pilots who are not proficient in instrument flight become disoriented and lose control of the airplane when they encounter IFR weather conditions. It is believed that spiral instability may have been a factor in many of those accidents.

Airplanes are generally spirally unstable. While Part 23 of the Federal Aviation Regulations contains requirements concerning directional and lateral stability, there are no specific requirements covering spiral stability. Spiral divergence usually starts as a gentle spiral which gets progressively tighter and steeper if the motion is not checked. Spiral divergence generally develops so gradually that under VFR conditions, the pilot corrects for it unconsciously and is often completely unware that spiral instability exists. However, under IFR conditions, the gradual development of spiral divergence may go undetected until the airplane is in a steep, high speed spiral. In this situation the speed build-up for an aerodynamically clean airplane, is usually very rapid.

For the foregoing reasons, the FAA has carried out a program in the design, development, and demonstration of a stability augmentation system to achieve positive spiral stability. In this connection, in a report dated November 1966, and entitled "Flight Evaluation of a Stability Augmentation System for Light Airplanes" (FAA-ADS-83), which covered the evaluation of one airplane on which a system had been installed, it is concluded that there is a significant improvement in the ability of noninstrument rated pilots to cope with flight in IFR conditions and in the quality of performance of experienced instrument rated pilots on airplanes having positive spiral stability obtained by a stability augmentation system. (This report may be purchased for $3.00 from Clearinghouse for Federal Scientific and Technical Information, U.S. Department of Commerce, Springfield, Va. 22151.)

Several manufacturers are currently marketing lateral stability augmentation systems which list for from $500 to $2,000. The price may be less for factory installations. The more expensive autopilot systems which incorporate two or three axis control and stabilization are also available. Limited operational experience has been obtained with one type of small airplane in which a stability augmentation system is installed as original equipment.

For the foregoing reason, the FAA believes that rule-making action may be appropriate with respect to spiral stability for small airplanes. However, as indicated herein, the FAA does not at this time have sufficient information to select the appropriate course of action upon which a rule making proceeding might be undertaken. Therefore, the FAA solicits the views of all interested persons as to the need for positive spiral stability in small airplanes and on the availability and practicability of the various stability augmentation systems or of inherent aerodynamic means designed to achieve this stability. In particular, comments are requested in the following areas:

(1) Should the FAA require that all small airplanes have positive spiral stability? If not, what criterion should be used to determine the airplanes that must meet such a requirement? In this connection, consideration should be given to the possibility of differentiating airplanes on the basis of characteristics, such as speed buildup in a spiral or on the basis of the type of operation in which they are intended to be used, such as extended cross-country flight.

(2) What criterion should be used to measure the spiral stability of an airplane?

(3) If positive spiral stability is to be required, what speed range should it encompass?

(4) If a stability augmentation system is employed to achieve positive spiral stability, should a failure warning device be required?

(5) How much lead time would be required for installation of a stability augmentation system on airplanes currently being manufactured and on airplanes in current operation?

If a stability augmentation system is employed to achieve spiral stability, the FAA believes that the airplane should be required to meet all of the present flight characteristics in Part 23 with the system operative and inoperative, that system reliability should comply with the basic equipment requirements of Part 23, and that no hazards should result in the event of failure of the equipment.

Stall deterrent devices. Another area of concern to the FAA is the fact that stall type accidents continue to represent a relatively large percentage of the total accidents involving small airplanes. Up to the present time, means to prevent stall type accidents have presented a formidable challenge to safety experts in both government and industry. The basic effort has been aimed at pilot education and the utilization of stall warning means.

However, the FAA has recently conducted some tests with a device called the "stall barrier." This device is a simplified adaptation of the stick pusher used on some of the modern jet swept-wing airplanes. It consists of a small electric servo unit using a cable from the drum of the servo to the control stick. The magnetic clutch of the servo is wired into the airplane's conventional stall warning system so that, at a high angle of attack, the magnetic clutch is energized at the same time stall warning is triggered. This imposes a push force on the stick which, if unrestricted, will operate the elevators to reduce the angle of attack of the wing. The results of the preliminary testing is given in the Office of Aviation Medicine Report, AM 66-31 titled "The 'Stall Barrier' as a New Preventive on General Aviation Accidents," which may be obtained from the Aeromedical Education Division of the Federal Aviation Administration, AM-300, 800 Independence Avenue SW., Washington, D.C. 20590. The FAA has not fully evaluated this device and plans are under way to carry out a more exhaustive test program. Nevertheless, in the light of the promise held out by this stall deterrent device, the FAA considers that the aviation community should be made aware of it at the earliest moment.

The FAA is aware that there may be other stall deterrent devices under development and that stall deterrence may be possible by utilizing new types of stall warning or by other techniques. The FAA solicits the views of all interested persons on the practicability and availability of the various devices and techniques. In particular, comments are requested from all interested persons in the following areas:

(1) Should the FAA require the installation of a stall deterrent device?

(2) What plans, if any, do the airframe and equipment manufacturers have for developing stall deterrent devices? Would these devices provide failure warnings to the pilot?

(3) What costs would be involved in installing a stall deterrent device of the type described above?

(4) What repeatability tolerance in actuation airspeed should be expected and what effect would such a tolerance have on performance?

(5) What effect would such a device have on present stall warning requirements?

(6) How much lead time would be required for installation of a stall deterrent device on airplanes currently being manufactured and on airplanes in current operation?

As stated above, the FAA is not at this time prepared to require the installation of any particular stall deterrent device. However, if any device should be

proposed in future rule making, it should not be permitted to mask poor stall characteristics for any airplane and the airplane on which such a device would be installed should meet the flight characteristics requirements of Part 23 with the device operative and inoperative.

The agency realizes that comments on this Notice could conceivably take the form of a list of "yes" or "no" answers. However, since the purpose of an advance notice is to obtain public participation in the identification and selection of a course or courses of action, it is obvious that comments in such form would be of little value to the FAA. Therefore, it is requested that comments contain supporting statements and data, where available, to justify all recommendations and conclusions.

While the subjects of spiral stability and stall deterrent devices are covered together in this advance notice, they may not be considered concurrently in any future rule-making action.

This advance notice of proposed rule making is issued under the authority of sections 313(a) and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421).

Issued in Washington, D.C., on July 19, 1967.

JAMES F. RUDOLPH,
Acting Director,
Flight Standards Service.

[F.R. Doc. 67-8590; Filed, July 24, 1967; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 67-AL-16]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration proposes an amendment to Part 71 of the Federal Aviation Regulations which would alter the effective hours of the Gustavus, Alaska, Control Zone.

Installation of equipment is now in progress to remotely control the Gustavus Flight Service Station from the Juneau, Alaska, Flight Service Station on a continuous basis. Air-ground communications and operation and monitoring of air navigational aids will continue to be available on a 24-hours basis. Hourly and special weather observations which are a prerequisite to the continued designation of the control zone will be available only from 0600 to 1800 hours, local time daily. Therefore, the control zone hours of designation are proposed to be redescribed to coincide with the weather reporting service.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Alaskan Region, Federal Aviation Administration, 632 Sixth Avenue, Anchorage, Alaska 99501. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

The public docket will be available for examination by interested persons at the Office of the Regional Counsel, Federal Aviation Administration, 632 Sixth Avenue, Anchorage, Alaska 99501.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Anchorage, Alaska, on July 11, 1967.

GEORGE M. GARY,
Director, Alaskan Region.

[F.R. Doc. 67-8587; Filed, July 24, 1967; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 67-SW-39]

CONTROL ZONE AND TRANSITION AREAS

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Pine Bluff, Ark., control zone and transition area and the Little Rock, Ark., transition area to conform with present criteria and to provide airspace protection for aircraft executing an instrument approach procedure proposed for Grider Field, Pine Bluff, Ark.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Division. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal Docket will also be available for examination at the Office of the Chief, Air Traffic Division.

The Pine Bluff, Ark., control zone described in § 71.171 (32 F.R. 2127) would be altered by adding "* * * and within 2 miles each side of the Pine Bluff VORTAC 185° (179° magnetic) radial, extending from the 5-mile radius zone to 10.5 miles S of the VORTAC."

The Pine Bluff, Ark., transition area described in § 71.181 (32 F.R. 2237) would be altered by redescribing it as "that airspace extending upward from 700 feet above the surface within a 7-mile radius of Grider Field (latitude 34°10'35" N., longitude 91°55'55" W.); within 5 miles E and 8 miles W of the Pine Bluff VORTAC 006° (360° magnetic) radial, extending from the VORTAC to 12 miles N; and within 2 miles each side of the Pine Bluff VORTAC 185° (179° magnetic) radial, extending from 10.5 miles S of the VORTAC to 18.5 miles S."

The Little Rock, Ark., transition area 1,200-foot portion described in § 71.181 (32 F.R. 2213) would be altered by substituting "latitude 33°51'00" N., longitude 91°48'00" W." for "latitude 33°-53'00" N., longitude 91°56'00" W." wherever it appears.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Fort Worth, Tex., on July 11, 1967.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 67-8588; Filed, July 24, 1967; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 67-CE-87]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Missoula, Mont.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief.

Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

The VOR/DME No. 1 public instrument approach procedure for the Missoula, Montana County Airport is being modified by adding a DME arc which is not completely protected with present

controlled airspace designation. Therefore, it is necessary to alter the Missoula transition area to provide controlled airspace protection for aircraft executing this revised approach procedure.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (32 F.R. 2148), the following transition area is amended to read:

MISSOULA, MONT.

That airspace extending upward from 700 feet above the surface within 5 miles northeast and 8 miles southwest of the Missoula VORTAC 122° and 302° radials, extending from 5 miles southeast to 19 miles northwest of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within 8 miles southwest and 9 miles northeast of the Missoula VORTAC 118° and 298° radials, extending from 7 miles southeast to 16 miles northwest of the VORTAC; and within a 19-mile radius of the Missoula VORTAC, extending clockwise from the northeast edge of V-2 to the west edge of V-231.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued at Kansas City, Mo., on July 5, 1967.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 67-8591; Filed, July 24, 1967; 8:50 a.m.]

[14 CFR Part 73]

[Airspace Docket No. 67-EA-59]

RESTRICTED AREA

Proposed Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 73 of the Federal Aviation Regulations which would establish a restricted area north of West Sister Island in Lake Erie, Ohio.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, D.C. 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The Department of the Navy, in October of 1966, submitted a request for the designation of restricted airspace over a portion of Lake Erie near Cedar Point, Ohio, to contain bombing and rocket firing exercises utilizing inert ordnance. This request was published as a notice of proposed rule making in the FEDERAL REGISTER dated March 21, 1967 (32 F.R. 4316).

In this NPRM it was explained that these exercises to maintain combat readiness are presently conducted within Restricted Area R-5502, Lacarne, Ohio, by naval aircraft operating out of the United States Naval Air Station, Grosse Ile, Mich. It was further explained that the Army, which is the designated user of R-5502 has indicated that this area may be reduced in size to accommodate ground firing only. However, that reduced area would not be large enough to meet the Navy requirements. Therefore, it was proposed to redesignate R-5502 as a smaller area than is presently designated, but large enough to accommodate the Navy's requirements.

This NPRM met with strong objections from shipping, boating, and conservation elements and, as a result, the NPRM was withdrawn on May 9, 1967. The notice of withdrawal stated that a new proposal was being proposed by the Department of the Navy.

Separate rule-making action is now being taken to divide Restricted Area R-5502, Lacarne, Ohio, into two areas, smaller overall, with a northern portion, R-5502B, being retained around the Navy target. This northern portion, however, is not large enough to contain the associated flight activities and the Navy has submitted another proposal that would adjoin this northern portion and would meet their requirements for operations from Grosse Ile NAS.

This proposal satisfies the minimum Navy requirements while accommodating the conflicting civil interests in Lake Erie. The new area requested would not include West Sister Island within restricted airspace, and would allow access to the Bass Island complex from Maumee Bay. The proposed area together with those portions of R-5502 being retained is smaller than that previously requested, smaller than the present R-5502, and avoids major shipping routes. The Navy has advised they are taking concurrent action through the Army Corps of Engineers to reduce the surface danger area to coincide with the restricted airspace set forth in this proposal. As a result, surface vessels will have free access to West Sister Island and unimpeded passage from Maumee Bay to the Bass Islands.

If this proposal is adopted, R-5502B would be revoked and the following would be added to Part 73 of the Federal Aviation Regulations.

R-5505 LAKE ERIE, OHIO

Boundaries: Beginning at latitude 41°44'-48" N., longitude 83°10'00" W.; thence to latitude 41°47'18" N., longitude 83°10'00" W.; thence to latitude 41°49'00" N., longitude 83°05'50" W.; thence to latitude 41°-46'15" N., longitude 83°00'00" W.; thence to latitude 41°44'48" N., longitude 83°00'-00" W.; thence to the point of beginning.

Designated altitude: Surface to 2,600 feet MSL.

Time of designation: 0800-2300 e.s.t., Wednesday through Saturday; 0800-1700 e.s.t., Sundays.

Controlling agency: Federal Aviation Administration, Toledo Airport Traffic Control Tower.

Using agency: Commanding Officer, U.S. Naval Air Station, Grosse Ile, Mich.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348).

Issued in Washington, D.C., on July 18, 1967.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[F.R. Doc. 67-8589; Filed, July 24, 1967; 8:50 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 221, 399]

[Docket No. 18356; EDR-112C; PSDR-17C]

TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Passenger Charges for In-Flight Service of Alcoholic Beverages in Interstate and Overseas Air Transportation; Supplemental Notice

JULY 21, 1967.

The Board in 32 F.R. 8921, June 22, 1967, and by circulation of EDR-112A, PSDR-17A, dated June 15, 1967, gave notice that it had under consideration proposed amendments to Part 221 of the Economic Regulations (14 CFR Part 221) and Part 399 of its Statements of General Policy (14 CFR Part 399), to require carrier tariffs to contain data with respect to in-flight service of alcoholic beverages to passengers in any or all classes of service in interstate or overseas air transportation. The Board invited comments on the proposal by July 24, 1967.

By letter received by the Board on July 20, 1967, Continental Air Lines, Inc., has requested an extension of time for filing comments in this proceeding. It asserts that, if an agreement among a wide group of carriers providing for effective control of service of alcoholic beverages on commercial aircraft could be achieved, such a broad industry approach would be preferable to requiring carriers to file tariff rules and charges on the matter. The carrier therefore requests the Board to afford all interested carriers the opportunity of attending such a meeting in the very near future to discuss this matter under the auspices of the Air Transport Association and, accordingly, seeks an extension of the date for filing comments in the rule making proceeding until after the intercarrier meeting and after the results of that meeting can be given to the Board. By telegram received July 20, Trans World Airlines, Inc., supports Continental's request for extension.

There has not been a sufficient showing to grant the extension of time requested; therefore, it is denied. The issue in this rule making proceeding is not, as Continental indicates, the effective control of service of alcoholic beverages on commercial aircraft. Rather, it is the more limited issue as to whether the Board should require carriers to set forth in their tariffs their charges and rules for service of alcoholic beverages and whether the Board should adopt a policy of requiring appropriate separate charges for all alcoholic beverages. No reasons have been set forth as to why this matter should be handled by intercarrier agreement rather than by the Board's rule making and tariff regulatory powers. The Board had occasion recently to consider this very issue in a similar matter relating to passenger charges for visual in-flight entertainment in interstate and overseas air transportation. There, it tentatively concluded[1] that an appropriate passenger charge should be assessed for the provision of visual in-flight entertainment, in what amount the minimum charge should be, and that the implementation of such a charge in interstate and overseas air transportation would more appropriately be accomplished by exercise of the Board's rate and rule making powers under the Act rather than in a section 412 proceeding for approval of an intercarrier agreement. Continental has made no showing that these conclusions are not similarly applicable to in-flight service of alcoholic beverages. Accordingly, there has been an insufficient showing to warrant the grant of the deferral of time requested.[2]

Nevertheless, because of the fact that comments on the proposed rule for passenger charges for in-flight service of alcoholic beverages will be due shortly and because some carriers may have delayed preparation of their comments in reliance on a potential grant of Continental's request for an extension of time, a one-week's extension of time for the filing of comments will be granted.

Accordingly, pursuant to authority delegated in section 385.20(d) of the Board's Organization Regulations, effective June 21, 1967, the undersigned hereby extends the time for submitting comments to July 31, 1967.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

By the Civil Aeronautics Board.

[SEAL] ARTHUR H. SIMMS,
Associate General Counsel,
Rules and Rates Division.

[F.R. Doc. 67-8633; Filed, July 24, 1967; 8:52 a.m.]

[1] Board Order E-24839 dated Mar. 9, 1967; EDR-112 and PSDR-17, dated Mar. 9, 1967, 32 F.R. 4076, Mar. 15, 1967.

[2] The apparent request of Continental for authority to discuss alcoholic beverage service with other carriers is not properly before the undersigned and the foregoing is, of course, without prejudice to the filing of an appropriate application with the Board for such authority.

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 12]

IMPORTS AND EXPORTS UNDER INTERNATIONAL COFFEE AGREEMENT

Bond for Certificate of Origin or Reexport; Notice of Proposed Rule Making

Notice of proposed Amendment of Customs Regulations prescribed under the International Coffee Agreement Act of 1965:

Pursuant to section 12.70(d) of the Customs Regulations, a bond on customs Form 7551, 7553, or 7595, may be given for the production of a certificate of origin or reexport under the International Coffee Agreement within 3 months of the date of entry if such certificate is not available at the time of entry. The amount of the bond required is $5,000 or the estimated value of the coffee, whichever is lower, unless a larger amount is deemed necessary to insure compliance with the regulations.

The Department of State has expressed concern that since many coffee transactions involve over $100,000, the $5,000 ceiling on bonds in many cases is inadequate to insure compliance with the requirements of the International Coffee Agreement. It has suggested that a bond in an amount which represents a fixed ratio of the value of the coffee involved would more effectively secure such compliance.

The Department of State is also concerned that the provision allowing three months for the production of certificates of origin may tend to break down the International Coffee Agreement's quarterly quota controls, since it makes it possible for certificates of origin bearing coffee stamps issued to producing countries for one quarter to be furnished to customs for shipments of coffee actually made in the previous quarter.

Therefore, under the authority conferred upon the President by section 2, subsection (1) of the International Coffee Agreement Act of 1965 (19 U.S.C. 1356a (1)), which authority was delegated to the Secretary of the Treasury by Executive Order No. 11229, dated June 14, 1965 (30 F.R. 7741), it is proposed to amend § 12.70(d) of the Customs Regulations relating to the amount of the bond to be given for the production of missing certificates of origin or reexport, and the time allowed for the production of such certificates.

It is also proposed to amend § 12.70(b) of the Customs Regulations to incorporate the requirements of the International Coffee Organization for affixing coffee export stamps to certificates of origin and for issuance of certificates of origin on customs Form 4470 for green coffee grown in Hawaii and exported to a foreign country, other than a country listed in Annex B of the International Coffee Agreement.

The terms of the proposed amendments, in tentative form, are as follows:

Section 12.70(b) is amended to read as follows:

(b) *Certificate of origin and reexport.* (1) No coffee imported from a country which is a member of the International Coffee Agreement of 1962 and no coffee grown in a member country and arriving from a nonmember country or area shall be admitted to entry for consumption in the customs territory of the United States unless there is presented for such coffee a valid certificate of origin or certificate of reexport prescribed under the Agreement, or unless a bond for the production of a proper certificate is filed as provided in paragraph (d) of this section. Certificates of origin must bear coffee stamps issued by the International Coffee Organization and affixed thereto in accordance with the requirements of said organization in order to be valid. A certificate of origin on customs Form 4470 bearing the appropriate coffee export stamps and certified by a U.S. customs officer shall be required for green coffee grown in Hawaii and exported either directly or via the mainland United States to a foreign country other than a country listed in Annex B of the Agreement. A certificate of reexport on customs Form 4469 is required to be issued for coffee imported into the United States and subsequently exported to any foreign country. A certificate of origin or reexport shall not be required for shipments of coffee proceeding through the United States on a through bill of lading nor for coffee entered for consumption in or reexported to Puerto Rico.

Section 12.70(d) is amended to read as follows:

(d) *Acceptance of shipment without certificates of origin and reexport; bond.* If a certificate of origin or reexport is not available at the time of entry, the entry shall be accepted only if (1) the district director is satisfied that the failure to produce the required certificate is due to a cause beyond the control of the person for whom the entry is tendered, and (2) such person or his agent gives a bond on customs Form 7551, 7553, or 7595, for the production of the required certificate. The amount of the bond shall be one-fourth the estimated value of the coffee involved or such larger amount as may be considered necessary to insure compliance with the International Coffee Agreement. If a valid certificate is not produced within 15 days of the date of entry, liquidated damages in the full amount of the bond shall be assessed, except that upon written application to the district director the period for producing the missing certificate may be extended for an additional 15 days. Such liquidated damages may be cancelled upon the payment of a lesser amount to be determined by the Bureau if the importer produces satisfactory evidence that the shipment was authorized in accordance with the International Coffee Agreement, and that the failure to produce a certificate was not due to negligence or lack of good faith on the part of any party to the transaction.

Prior to the issuance of the proposed amendments, consideration will be given to any relevant data, views, or arguments which are submitted in writing to the Commissioner of Customs, Bureau of Customs, Washington, D.C. 20226, and received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER. No hearings will be held.

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: July 20, 1967.

TRUE DAVIS,
Assistant Secretary of the Treasury.

[F.R. Doc. 67-8704; Filed, July 24, 1967; 11:25 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

[Antidumping—ATS 643.3–W]

HIGH SPEED STEEL TWIST DRILLS FROM JAPAN

Antidumping Proceeding Notice

JULY 19, 1967.

On June 8, 1967, information was received in proper form pursuant to the provisions of § 14.6(b) of the Customs Regulations indicating a possibility that high speed steel twist drills and twist drill sets, short length, straight shank, as follows:

Drills:
Type B, class 1, fractional sizes 1/4" and under.
Type C, wire-gauge sizes 1 through 20.
Type D, letter sizes J-T-X-Y-Z.
Drill sets:
Type B, class 1, 8-piece set, 1/16" to 1/2" by 16ths.
Type B, class 1, 29-piece set, 1/16" to 1/2" by 64ths.

manufactured by Sonoike Tool Manufacturing Co., Ltd., 100, Maegawa, Tachibanacho, Ashigara-Shimogun, Kanagawa Prefecture, Japan; and Kobe Steel Limited, Nishioike Kanegasaki, Uozumi Cho Akashi City, Hyogo Prefecture, Japan, are being, or likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

Pursuant to a determination under § 14.6a of the Customs Regulations, the name of the person who raised or presented the question of dumping is withheld.

Ordinarily, merchandise is considered to be sold at less than fair value when the net, f.o.b. factory price for exportation to the United States is less than the net, f.o.b. factory price to purchasers in the home market, or, where appropriate, to purchasers in other counties, after due allowance is made for difference in quantity and circumstances of sale.

Having conducted a summary investigation pursuant to § 14.6(d) (1) (i) of the Customs Regulations and having determined on this basis that there are grounds for so doing, the Bureau of Customs is instituting an inquiry pursuant to the provisions of § 14.6(d) (1) (ii), (2), and (3) of the Customs Regulations to determine the validity of the information.

A summary of information received from all sources is as follows:

The information before the Bureau indicates the possibility that the above-identified twist drills from Japan are being sold to the United States at prices which are substantially below the prices at which comparable merchandise is beng sold in the home market.

This notice is published pursuant to § 14.6(d) (1) (i) of the Customs Regulations (19 CFR 14.6(d) (1) (i)).

[SEAL] LESTER D. JOHNSON,
Commissioner of Customs.

[F.R. Doc. 67–8567; Filed, July 24, 1967; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

IDAHO

Notice of Proposed Withdrawal and Reservation of Lands

JULY 18, 1967.

The Department of Agriculture has filed an application, Serial No. I–1599, for the withdrawal of the lands described below, from all forms of appropriation under the public land laws, including the mining laws but not the mineral leasing laws, subject to valid existing rights.

The applicant desires the land for use as the Stanley Administrative Site by the Challis National Forest.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Post Office Box 2237, Boise, Idaho 83701.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's and to reach agreement on the concurrent management of the lands and their resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the Department of Agriculture.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place which will be announced.

The lands involved in the application are:

BOISE MERIDIAN

CHALLIS NATIONAL FOREST

Stanley Administrative Site

T. 10 N., R. 13 E.,
Sec. 22, lot 7, E½SE¼SW¼;
Sec. 27, N½NW¼NE¼.

The area described aggregates 66.26 acres.

ORVAL G. HADLEY,
Manager, Land Office.

[F.R. Doc. 67–8554; Filed, July 24, 1967; 8:48 a.m.]

[OR 1499 (Wash.)]

WASHINGTON

Notice of Hearing on Proposed Withdrawal of Public Lands

JULY 19, 1967.

Notice is hereby given that a public hearing will be held at 10 a.m., Tuesday, August 29, 1967, in the auditorium of the Cowlitz Public Utilities District, 960 Commerce Street, Longview, Wash. 98632, pertaining to the request of the Bureau of Sport Fisheries and Wildlife, Department of the Interior (OR 1499), for the withdrawal from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, of the public lands described hereafter for use by the Bureau of Sport Fisheries and Wildlife, Department of the Interior, for the management of migratory birds and other wildlife as an extension of the Willapa National Wildlife Refuge as set forth in the notice of proposed withdrawal and reservation of lands published in the FEDERAL REGISTER on April 19, 1967, volume 32, page 6148. The lands are described as follows:

WILLAMETTE MERIDIAN

T. 13 N., R. 11 W.,
Sec. 4, lots 1 to 6, inclusive, and SW¼SE¼;
Sec. 5, lot 1;
Sec. 8, lots 1 to 4, inclusive, E½NE¼, and SE¼;
Sec. 9, lots 1 to 11, inclusive, NW¼NE¼, and NE¼NW¼;
Sec. 10, lot 1;
Sec. 16, lots 3 to 7, inclusive, and NW¼SW¼;
Sec. 17, lots 1 to 6, inclusive, NE¼, N½SE¼, and SW¼SE¼.

The areas described aggregate 1,433.13 acres in Pacific County, Wash.

The hearing will be open to attendance of opponents to the withdrawal who may state their views and to proponents of the withdrawal who may explain its purpose, intent and extent; and to all interested persons who desire to be heard on the subject. Those who desire to be heard in person at the hearing and those who desire to submit written statements should file notice thereof not later than

August 25, 1967, with the State Director, Bureau of Land Management, Post Office Box 2965, Portland, Oreg. 97208.

IRVING W. ANDERSON,
Acting State Director.

[F.R. Doc. 67-8576; Filed, July 24, 1967; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket Nos. 18806 etc.; Order No. E-25436]

FRONTIER AIRLINES, INC.

Order of Investigation and Suspension Regarding Military Wives and Mothers Fare

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of July 1967.

Military wives and mothers fare, proposal of Frontier Airlines, Inc., Dockets 18806, 18722, 18728, 18729.

By Order E-25417 (July 13, 1967) the Board suspended the subject tariff proposal of Frontier Airlines, Inc., and ordered it investigated. Ordering paragraph 2 of aforesaid order inadvertently established the period of suspension to the expiry date marked in the tariff, instead of the customary 90-day period. This order will amend Order E-25417 to correctly state the suspension period.

Accordingly, it is ordered, That:

1. Order E-25417 dated July 13, 1967, be and it is amended to substitute the date October 29, 1967, for January 31, 1968, in ordering paragraph 2.

2. The investigation instituted by Order E-25417 dated July 13, 1967, as amended herein, be assigned Docket number 18806.

3. Copies of this order be filed with tariff CAB No. 101 issued by Airline Tariff Publishers, Inc., Agent and be served upon Frontier Airlines, Inc., Western Air Lines, Inc., Northwest Airlines, Inc., and Continental Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 67-8612; Filed, July 24, 1967; 8:52 a.m.]

[Docket No. 18808; Order No. E-25438]

SHULMAN, INC.

Order of Investigation and Suspension Regarding Fee for Advancing Charges

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of July 1967.

By tariff revisions filed on June 20, 1967, marked to become effective July 26, 1967, Shulman, Inc. (Shulman), an air freight forwarder, proposes a rule establishing a fee for advancing charges for services performed by others in connection with air freight service. The rule in question provides as follows:

> Upon request, the forwarder will advance charges for transportation and cartage not performed by the forwarder. A handling charge equal to 10 percent of the first $50 advanced, and 1 percent of all amounts over the first $50 * * * of the amount advanced, subject to a minimum charge of 50 cents, will be assessed.

The charges indicated above would be advanced by the forwarder chiefly to cartage agents and truckers, which have performed cartage or transportation services in connection with a shipment.[1] The charges are advanced for shipments on which the forwarder will subsequently collect charges from the consignee. At present, fees are not imposed for advancing charges by most direct and indirect air carriers in domestic service.

Upon consideration of the tariff proposal and of all relevant matters, the Board finds that the fee proposed by Shulman may be unjust, unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, or otherwise unlawful, and should be investigated. It is recognized that the advancing of charges is a service over and above that of providing air transportation and involves bookkeeping and administrative expenses to the forwarder. Such advances—when in cash—require use of forwarder funds pending final collection, usually from the consignee, and may involve some degree of risk to the forwarder from a consignee defaulting on the reimbursement of the advanced charges.

However, Shulman has presented no basis at all for the fee scale proposed. While the fee schedule appears modest for very small advances—for an advance charge of $5 the fee would be 50 cents—if the advances involve larger amounts, the fee is relatively large. Thus, for an advance of $50, the fee would be $5. This is much larger than the fee for a similar advance in the schedule approved in Order E-22954, dated December 1, 1965, involving IATA Resolution 509. This resolution established a fee schedule of 1 percent but not less than $2, provided that the charge need not be made where the amount to be collected is less than $50. Under the IATA Resolution, the fee for an advance of $50 is $2, the minimum charge. A fee of $5, applicable to a Shulman advance of $50, would pay for an advance of $500 under the IATA Resolution.

A number of major forwarders do not impose any fees at all for advancing charges. An exception is Emery Air Freight Corp. (Emery), whose fees are considerably lower than in Shulman's proposal. Emery's fees range from 25 cents for advances not exceeding $100 to 85 cents for advances between $400 and $500; an additional 5 cents is charged for each $100 of advance.

By Order E-25035, dated April 25, 1967, the Board set for investigation and suspended fees for advancing charges proposed by Mohawk Airlines, Inc. (Mohawk) and Ozark Air Lines, Inc. (Ozark), to have become effective April 28, 1967. These fees would have amounted to 5 percent of the amounts advanced, subject to a minimum of $1. Except for the differences in minimum charges, the fees would have been lower than these currently proposed by Shulman for advances up to $112.50. In suspending the proposals of Mohawk and Ozark, the Board noted that the carriers had not adequately justified the fee scale proposed. Subsequent to the Board's action, the foregoing carriers canceled their suspended tariffs and filed a fee schedule of 1 percent, subject to a $2 minimum, of the amount advanced. This filing has been permitted by the Board to become effective June 8, 1967.[2]

In view of the foregoing, the Board has decided to suspend the proposal pending investigation.[3] The Board, however, would consider proposals wherein the fee schedule is shown to be reasonably related to costs for both large and small advancements.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That:

1. An investigation be instituted to determine whether the charges and provisions in Rule No. 115 on 6th Revised Page 7 and the charges and provisions on 1st Revised Page 9 of Shulman, Inc.'s tariff CAB No. 38, and rules, regulations, and practices affecting such charges and provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful charges and provisions, and rules, regulations, or practices affecting such charges and provisions;

2. Pending hearing and decision by the Board, the charges and provisions in Rule No. 115 on 6th Revised Page 7 and the charges and provisions on 1st Revised Page 9 of Shulman, Inc.'s tariff CAB No. 38 are suspended and their use deferred to and including October 23, 1967, unless

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[1] The advanced charge service is provided under two circumstances: (1) The forwarder pays cash at the time of acceptance of the traffic for services previously performed by some other party, such as a trucker, with such amount to be reimbursed to forwarder at destination by the consignee; or (2) the same charge would similarly be shown as an amount to be collected at destination from the consignee and then reimbursed to the other patry at origin for whom such amounts were advanced. In the first instance, there is an actual cash advancement by the forwarder; in the second instance, the transaction does not involve advancement of funds, and in this respect is analogous to a c.o.d. service.

[2] The tariff provides for advances for transportation, cartage, storage, loading, unloading, packaging, and processing not performed by the carriers, and for government duties and customs fees. In contrast, Shulman's proposal involves only advances for transportation and cartage.

[3] While the proposed schedule would result in smaller fees than those put into effect by Mohawk and Ozark for advances under $20, the Board has considered the fee schedule as a unit for suspension purposes.

otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein be assigned before an examiner of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be filed with the tariff and served upon Shulman, Inc., which is hereby made a party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 67-8613; Filed, July 24, 1967; 8:52 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-294]

MICHIGAN STATE UNIVERSITY

Notice of Application for Utilization Facility License

Please take notice that Michigan State University, pursuant to 104c of the Atomic Energy Act of 1954, as amended, has submitted an application for necessary licenses to construct and operate a TRIGA type nuclear reactor for research and training on the University's campus at East Lansing, Mich. A copy of the application, dated July 5, 1967, is available for public inspection in the AEC Public Document Room, located at 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 17th day of July 1967.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing.

[F.R. Doc. 67-8518; Filed, July 24, 1967; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

DIMETHOATE AND ITS OXYGEN ANALOG

Notice of Establishment of Temporary Tolerances

Notice is given that at the request of the American Cyanamid Co., Post Office Box 400, Princeton, N.J. 08540, temporary tolerances have been established for total residues of the insecticide dimethoate (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog (*O,O*-dimethyl *O*-(*N*-methylcarbamoylmethyl) phosphorothioate) at 0.1 part per million in or on wheat and at 0.5 part per million in or on wheat straw. The Commissioner of Food and Drugs has determined that these temporary tolerances will protect the public health.

A condition under which these temporary tolerances are established is that the insecticide will be used in accord with the temporary permit issued by the U.S. Department of Agriculture.

These temporary tolerances expire July 18, 1968.

This action is taken pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a (j)) and delegated by him to the Commissioner (21 CFR 2.120).

Dated: July 18, 1967.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 67-8561; Filed, July 24, 1967; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

CORNING SALES CO. ET AL.

Notice of Changes in Names of Posted Stockyards

It has been ascertained, and notice is hereby given, that the names of the livestock markets referred to herein, which were posted on the respective dates specified below as being subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), have been changed as indicated below.

Original name of stockyard, location, and date of posting	*Current name of stockyard and date of change in name*
ARKANSAS	
Corning Sales Company, Corning, Feb. 20, 1959	Corning Livestock Auction, Inc., Apr. 1, 1967.
COLORADO	
Farmers & Ranchers Commission Company, Fort Collins, Apr. 25, 1957.	Farmer and Rancher Livestock Commission Company, Inc., May 23, 1967.
Sunset Livestock Commission Company, Greeley, May 23, 1967.	Greeley Livestock Commission Co., June 19, 1967.
FLORIDA	
Columbia Livestock Market, Inc., Lake City, Mar. 2, 1960.	Columbia Livestock Market, June 1, 1967.
ILLINOIS	
Winslow Marketing Center, Winslow, Nov. 24, 1959.	Winslow Marketing Center, Inc., Jan. 1, 1967.
MISSOURI	
Alton Sale Co., Alton, Apr. 21, 1960	Alton Sales Company, Jan. 1, 1967.
NORTH CAROLINA	
Breeders Livestock Sale, Inc. of Asheboro, Asheboro, Dec. 1, 1959.	Breeders Livestock Sale, Dec. 5, 1966.
Winfield Stockyards, Inc., Chocowinity, July 9, 1959.	Chocowinity Stockyard, Jan. 4, 1967.
PENNSYLVANIA	
Hickory Auction & Sales, Inc., Hickory, Feb. 1, 1960.	Hickory Auction & Sales, Nov. 7, 1966.
SOUTH DAKOTA	
Belle Fourche Livestock Exchange, Belle Fourche, Apr. 15, 1941.	Belle Fourche Livestock Exchange, Inc., Jan. 1, 1959.
Faith Livestock Commission Company, Faith, Aug. 17, 1950.	Faith Livestock Commission Company, Inc., Jan. 1, 1957.

Done at Washington, D.C., this 18th day of July 1967.

EDWARD L. THOMPSON,
Registrations, Bonds, and Reports Branch, Packers and Stockyards Administration.

[F.R. Doc. 67-8610; Filed, July 24, 1967; 8:52 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Mexican List No. 237]

MEXICAN BROADCAST STATIONS

Changes, Proposed Changes, and Corrections in Assignments

FEBRUARY 2, 1967.

Notifications under the provisions of Part III, section 2 of the North American Regional Broadcasting Agreement; list of changes, proposed changes, and corrections in assignments of Mexican Broadcast Stations modifying the appendix containing assignments of Mexican Broadcast Stations (Mimeograph No. 4721-6) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
		590 kilocycles				
XEHQ (Temporary operation with 500 W, ND, U. Previously notified for operation with 1,000 W, ND, U. The increase to 1,500 W-N is based upon application of the 70 percent rule).	Hermosillo, Sonora	1,500	ND	U	III	4-30-67.
		680 kilocycles				
XEBU (Change in class of daytime operation. Previously IV).	Chihuahua, Chihuahua	5,000-D/250-N	ND	U	III-D, IV-N	2-2-67.
		690 kilocycles				
XECK (In operation on 620 kc/s. Change in Class of daytime operation).	Durango, Durango	1,000-D/100-N	ND	U	III-D, IV-N	3-11-63.
		760 kilocycles				
XEEQ (Assignment deleted. See 760 kc/s).	San Luis Potosi, San Luis Potosi.	250	ND	D	II	2-2-67.
		760 kilocycles				
XEEQ (In operation on 760 kc/s).	San Luis Potosi, San Luis Potosi.	250	ND	D	II	4-22-64.
		790 kilocycles				
XESU (Correction to notification in Change List No. 236).	Mexicali, Baja California.	500	ND	D	III	
		810 kilocycles				
XEFW (Correction of an omission: in operation with 50,000 W, DA-N).	Tampico, Tamaulipas	50,000	DA-N	U	II	6-30-61.
		850 kilocycles				
XETQ (Correction of an omission: Change in class and increase in power. Temporary operation with 10,000 W, DA-2, with directional antenna system previously notified).	Orizaba, Veracruz	100,000-D/50,000-N.	DA-N	U	I-B	4-30-67.
		860 kilocycles				
XENW (Correction of an omission: In operation on 860 kc/s).	Culiacan, Sinaloa	1,000-D/250-N	ND	U	II	8-3-59.
		880 kilocycles				
XEMJ (Correction of an omission: In operation with 1,000 W-D, 250 W-N, ND, U).	Piedras Negras, Coahuila.	1,000-D/250-N	ND	U	IV	6-30-61.
		950 kilocycles				
XEGM (Correction of an omission: In operation with 2,500 W, ND, U. Previously with 2,500 W, DA-N. Withdraw proposal to increase to 3,500 W-D, ND).	Tijuana, Baja California.	2,500	ND	U	III	3-1-65.
		990 kilocycles				
XEK (Correction of an omission: Previously notified with 5,000 W-D, 1,000 W-N, DA-1. In operation with 2,000 W-D, 1,000 W-N, ND).	Nuevo Laredo, Tamaulipas.	2,000-D/1,000-N	ND	U	III	4-2-55.
		1010 kilocycles				
XEKD (In operation with 500 W-D, 200 W-N, ND, U. This confirms the notification for operation with 250 W-N contained in list No. 159. Such operation is feasible applying the 70 percent rule).	Cd. Acuna, Coahuila	500-D/250-N	ND	U	II	3-2-67.
		1070 kilocycles				
XEGY (Correction of an omission: In operation on 1070 kc/s. Previously notified on 1080 kc/s).	Tehuacan, Puebla	1,000-D/250-N	ND	U	II	11-15-62.
		1080 kilocycles				
XEDY (This confirms the notification for the change from 1480 kc/s made by telegram of April 12, 1965. Now in operation on 1060 kc/s).	Cuervos, Baja California.	500	ND	D	II	8-3-65.
		1080 kilocycles				
XEGY (Correction of an omission: Assignment deleted. See 1070 kc/s).	Tehuacan, Puebla	1,000-D/500-N	ND	U	II	3-2-67.
		1090 kilocycles				
XETA (Correction of an ommission: Previously notified with 500 W-D, 150 W-N, ND, U, II-D, IV-N. In operation).	Zitacuaro, Michoacan	500-D/100-N	ND	U	II	6-30-61.
		1180 kilocycles				
XEJP (Now in operation with new directional antenna pattern).	Mexico, D.F.	10,000	DA-N	U	III	1-4-64.
		1240 kilocycles				
XEWG (This confirms the notification made by telegram of September 13, 1966. In operation on 1240 kc/s).	Cd. Juarez, Chihuahua	250	ND	U	IV	9-28-63.
		1260 kilocycles				
XEL (Correction of an ommission: In operation with 10,000 W-D, 1,000 W-N, ND).	Mexico, D.F.	10,000-D/1,000-N.	ND	U	III	11-14-60.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
XEBP (Correction of an commission: In operation temporarily with 5,000 W-D, 250 W-N, ND).	Torreon, Coahuila	*1510 kilocycles* 10,000-D/250-N	ND	U	III-D, IV-N	9-15-51.
XEAI (Now in operation with 10,000 W-D, 1,000 W-N, ND. Increase in nighttime power).	Mexico, D.F.	*1590 kilocycles* 10,000-D/5,000-N.	DA-N	U	III	4-30-67.
XECK (Assignment deleted. See 620 kc/s).	Durango, Durango	*1540 kilocycles* 1,000-D/250-N	ND	U	IV	2-2-67.
XEKF (Correction of an omission: In operation with 1,000 W-D, 500 W-N, ND).	Igualo, Guerrero	*1560 kilocycles* 1,000-D/500-N	ND	U	III	6-30-61.
XEY (Correction of an omission: In operation with 1,000 W-D, 175 W-N, ND).	Celaya, Guanajuato	*1560 kilocycles* 1,000-D/175-N	ND	U	IV	6-30-61.
XEHF (Correction of an omission: In operation with 5,000 W, ND, U).	Nogales, Sonora	*1570 kilocycles* 5,000	*ND*	U	III	4-2-62.
XECO (Correction of an omission: In operation with 5,000 W, ND, U).	Mexico, D. F.	*1580 kilocycles* 5,000	ND	U	III	8-20-64.
XEGW (This corrects the notification included in List No. 230. In operation with 1,000 W-D since 11-11-64. Increase hours).	Cd. Victoria, Tamaulipas.	*1580 kilocycles* 1,000-D/150-N	ND	U	III-D, IV-N	3-2-67.
XEKT (Correction of an omission: In operation-notified previously with 250 W-D, 150 W-N).	Tecate, Baja California	*1580 kilocycles* 250-D/100-N	ND	U	IV	6-30-61.
XEGD (Now in operation on 1400 kc/s).	Hidalgo del Parral, Chihuahua.	*1400 kilocycles* 1,000-D/300-N	ND	U	IV	7-5-62.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8599; Filed, July 24, 1967; 8:51 a.m.]

[Mexican List No. 238]

MEXICAN BROADCAST STATIONS

Changes, Proposed Changes, and Corrections in Assignments

FEBRUARY 6, 1967.

Notifications under the provisions of Part III, section 2 of the North American Regional Broadcasting Agreement; list of changes, proposed changes, and corrections in assignments of Mexican Broadcast Stations modifying the appendix containing assignments of Mexican Broadcast Stations (Mimeograph No. 4721-6) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
XERPO (Assignment deleted).	Oaxaca, Oaxaca	*650 kilocycles* 1,000	ND	D	II	2-6-67.
XEBQ (PO: 1240 kc/s).	Guaymas, Sonora	*710 kilocycles* 1,000-D/250-N	ND	U	II	3-6-67 (Probable).
XEAN (Assignment deleted).	El Salto de Juanacatlan, Jalisco.	*790 kilocycles* 5,000	DA-D	D	III	2-6-67.
XEAN (new)	Ocotlan, Jalisco	*800 kilocycles* 1,000	ND	D	II	3-6-67 (Probable).
XEGO (Assignment of call letters).	Cozumel, Quintana Roo	*810 kilocycles* 1,000-D/500-N	DA-2	U	II	2-6-67.
XEOE (Completion of notification included in List No. 234. Previously notified on 1340 kc/s. Now in operation on 810 kc/s).	Tapachula, Chiapas	*810 kilocycles* 1,000-D/150-N	ND	U	II	2-21-66.
XEBA (Now in operation on 820 kc/s).	Guadalajara, Jalisco	*820 kilocycles* 1,000	ND	D	II	11-11-61.
XELA (PO: 10,000-D, 5000-N, DA-N).	Mexico, D. F.	*850 kilocycles* 10,000-D/ 5,000-N.	DA-1	U	II	4-6-67 (Probable).
XEBA (Assignment deleted. See 820 kc/s.).	Guadalajara, Jalisco	*840 kilocycles* 1,000	ND	D	II	2-6-67.
XEGB (Assignment deleted).	Coatzacoalcos, Veracruz	*840 kilocycles* 250	ND	D	II	2-6-67.
XEMY (Cancel the notification to change call letters included in Change List No. 231. Maintain the notification included in List No. 232. Now in operation).	Cd. Mante, Tamaulipas	*840 kilocycles* 500	ND	D	II	3-14-66.
XEMIA (Now in operation on 850 kc/s).	Chapala, Jalisco	*850 kilocycles* 1,000	ND	D	II	11-11-61.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
XEMIA (Assignment deleted. See 850 kc/s).	Chapala, Jalisco	*890 kilocycles* 1,000	ND	D	II	2-6-67.
(New) (Cancel the notification included in List No. 223).	Cd. Juarez, Chihuahua	*890 kilocycles* 1,000-D/250-N	ND	U	III	2-6-67 (Probable).
XERPN (Correction of power for nighttime operation as shown in List No. 233).	Cd. Juarez, Chihuahua	*890 kilocycles* 1,000-D/500-N	DA-N	U	II	8-6-67.
XETAA (Now at Torreon, Coahuila. Temporary operation with 500 W-D, 100 W N, since 10-5-66. Increase in nighttime power. Change in call letters—previous XEMD).	Torreon Coahuila	*890 kilocycles* 1,000-D/200-N	ND	U	IV	3-6-67 (Probable).
XERPH (Correction of notification included in List No. 233. In operation on 950 kc/s with 500 W D, 250 W N).	Chihuahua, Chihuahua	*950 kilocycles* 500-D/250-N	ND	U	III-D, IV-N	6-10-65.
XEU (Assignment deleted).	Veracruz, Veracruz	*960 kilocycles* 500	ND	U	III-B	2-6-67.
XEDX (Assignment deleted).	El Sauzal, Baja California.	*1010 kilocycles* 500-D/250-N	ND	U	II	2-6-67.
XETKR (Correction of an omission: This notifies the basic information relating to a change in frequency from 1490 kc/s to 1190 kc/s. Supplementary information was sent to the OIR on 1-11-65. In operation on 1190 kc/s at Villa de Guadalupe with 1,000 W-D, ND, D since 5-10-66. Change in call letters from XEJET).	Villa de Guadalupe, Nuevo Leon.	*1190 kilocycles* 1,000-D/500-N	DA-N	U	II	
XEBQ (Change to 710 kc/s).	Guaymas, Sonora	*1240 kilocycles* 1,000-D/250-N	ND	U	IV	3-6-67 (Probable).
XEAJ (Correction to notifications included in List No. 231 and 233. Change in call letters, previously XESG. In operation on 1330 kc/s with 500 W-D since 10-13-64. Increase in hours).	Saltillo, Coahuila	*1330 kilocycles* 500-D/100-N	ND	U	III-D, IV-N	4-6-67 (Probable).
XEKS (Assignment deleted).	Saltillo, Coahuila	*1330 kilocycles* 100	ND	U	IV	2-6-67.
XEOE (Assignment deleted. See 810 kc/s).	Tapachula, Chiapas	*1540 kilocycles* 1,000-D/250-N	ND	U	IV	2-6-67.
XEUX (Assignment deleted).	Tuxpan, Nayarit	*1540 kilocycles* 1,000-D/250-N	ND	U	IV	2-6-67.
XEQY (Correction of an omission: Notification of basic information. Supplementary information sent to the OIR on April 20, 1965. In operation since 11-1-65).	Toluca, Mex	*1560 kilocycles* 500	DA-D	D	III	
XERK (Assignment deleted. Changed to 800 kc/s).	Tepic, Nayarit	*1580 kilocycles* 1,000-D/500-N	ND	U	III	2-6-67.
(New)	Tepic, Nayarit	*1580 kilocycles* 1,000-D/500-N	ND	U	III	8-6-67 (Probable).
XEM (Assignment deleted).	Chihuahua, Chihuahua	*1590 kilocycles* 500	ND	U	III-B	2-6-67.
XECC (Assignment deleted).	Cd. Camargo, Chihuahua.	*1440 kilocycles* 5,000-D/1,000-N	ND	U	III-A	2-6-67.
XEDV (Change in call letters from XEHA).	Cd. Camargo, Chihuahua.	*1440 kilocycles* 5,000-D/1,000-N	ND	U	III	2-6-67.
XEJQ (Assignment deleted. See 1500 kc/s).	Parras, Coahuila	*1440 kilocycles* 5,000	ND	D	II	2-6-67.
(New)	Parras, Coahuila	*1440 kilocycles* 5,000	ND	D	II	8-6-67 (Probable).
XERPH (Assignment deleted. See 950 kc/s).	Chihuahua, Chihuahua	*1490 kilocycles* 1,000-D/250-N	ND	U	IV	2-6-67.
XEDG (New)	Chihuahua, Chihuahua	*1490 kilocycles* 1,000-D/250-N	ND	U	IV	8-6-67 (Probable).
XEME (Correction to notification included in List No. 218: Previously notified for operation with 1000 W-D, 250 W-N).	Merida, Yucatan	*1490 kilocycles* 1,000-D/500-N	ND	U	IV	8-6-67 (Probable).
XEOB (Cancel notifications to change call letters to XETAA and XETBB and to reduce day power, included in List No. 232).	Torreon, Coahuila	*1490 kilocycles* 1,000-D/250-N	ND	U	IV	2-6-67.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
XEJQ (Now in operation on 1500 kc/s. Notification of class of the station).	Parras, Coahuila	*1500 kilocycles* 250	ND	D	II	12-12-66.
XEMS (PO: 1400 kc/s. Correction to class-previously notified III).	Matamoros, Tamaulipas	*1500 kilocycles* 1,000	DA-2	U	II	3-6-67.
XESG (Assignment deleted. See 1330 kc/s).	Saltillo, Coahuila	*1510 kilocycles* 1,000	ND	D	II	2-6-67.

[SEAL]

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8600; Filed, July 24, 1967; 8:51 a.m.]

[Mexican Change List No. 239]

MEXICAN BROADCAST STATIONS

Changes, Proposed Changes, and Corrections in Assignments

APRIL 8, 1967.

Notifications under the provisions of Part III, section 2 of the North American Regional Broadcasting Agreement; list of changes, proposed changes, and corrections in assignments of Mexican Broadcast Stations modifying the appendix containing assignments of Mexican Broadcast Stations (Mimeograph No. 4721-6) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
XEPT (Assignment deleted).	Cd. Pemex, Tab	*680 kilocycles* 250-D/100-N	ND	U	IV	4-8-67.
XEVL (This complements the notification included in List 230: Change in call letters, previously XEVG. In operation on 620 kc/s with 1,000W-D/100W-N, since 12-16-65).	Villahermosa, Tab	*680 kilocycles* 1,000-D/100-N	ND	U	III-D, IV-N	12-16-65.
XETN (New)	Moroleon, Gto	*700 kilocycles* 250	ND	D	II	10-8-67 (Probable).
XEBL (Previously notified with 5,000W-D/1,000W-N, DA-N).	Culiacan, Sin	*710 kilocycles* *1,000-D/250-N*	*ND*	U	II	5-8-67 (Probable).
XEBQ (This complements the notification included in List 228: Present operation 1240 kc/s, *Empalme, Sonora*).	*Guaymas, Son*	*710 kilocycles* 1,000-D/250-N	ND	U	II	5-8-67 (Probable).
XEKU (Correction of an omission: In operation since 12-11-61).	Acapulco, Gro	*710 kilocycles* 250-D/150-N	ND	U	II	12-11-61.
XEPQ (In operation on 710 kc/s with 500W-D/100W-N, since 7-21-66. Increase in daytime power).	Muzquiz, Coah	*710 kilocycles* 1,000-D/100-N	ND	U	II	10-8-67.
XEDGO (In operation since 7-20-66).	Durango, Dgo	*760 kilocycles* 1,000	ND	D	II	7-20-66.
XEAN (In operation since 3-6-67).	Ocotlan, Jal	*800 kilocycles* 1,000	ND	D	II	3-6-67.
XEORF (New)	El Fuerte, Sin	*950 kilocycles* 1,000D/500N	ND	U	III	9-8-67 (Probable).
XEBR (This corrects the notifications included in Lists 230 and 234: Previously notified on 620 kc/s as XEPT, Cd. Pemex, Tabasco. Change in call letters previously XEACM).	Macuspana, Tab	*1080 kilocycles* 1,000-D/150-N	ND	U	II	9-8-67 (Probable).
XEDY (This notified a change in the official name of the city. Previously Cuervos, B.C.).	*Cd. Morelos, B.C.*	*1080 kilocycles* 500	ND	D	II	
XEZL (Temporary operation with 10,000W, ND, D, since 3-20-67).	Jalapa, Ver	*1130 kilocycles* 10,000	DA-N	U	II	
XERTM	Macuspana, Tab	*1150 kilocycles* 1,000-D/125-N	ND	U	III-D, IV-N	5-8-67 (Probable).
XECT (This cancels the notification included in List 228).	Cd. Juarez, Chih	*1190 kilocycles* 5,000	ND	D	II	4-8-67.
XEPQ (Assignment deleted. See 710 kc/s).	Muzquiz, Coah	*1850 kilocycles* 500	ND	D	III	4-8-67.
XESC (New)	Sabinas, Coah	*1850 kilocycles* 1,000	ND	D	III	10-8-67 (Probable).
XEDH (In operation since 12-15-66).	Cd. Acuna, Coah	*1340 kilocycles* 250	ND	U	IV	12-15-66.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
XEDS (Assignment deleted. See 1470 kc/s).	Colima, Col.	*1340 kilocycles* 1,000	ND	D	IV	4-8-67.
XEZD (Assignment of call letters).	Cd. Camargo, Tams.	*1350 kilocycles* 250	ND	U	IV	5-8-67 (Probable).
XEZC (Assignment deleted).	Concepcion del Oro, Zac.	*1360 kilocycles* 250	ND	U	IV	4-8-67.
XEPJ (Change in location and call letters. Previously notified XEDG, Guadalajara, Jalisco).	San Pedro Tlaquepaque, Jal.	*1370 kilocycles* 500	ND	U	III	5-8-67 (Probable).
XERK (This corrects the notification included in List 228: Assignment deleted. Change to 860 kc/s).	Tepic, Nay.	*1380 kilocycles* 1,000-D/500-N	ND	U	III	2-6-67.
XEZD (Assignment deleted).	Cd. Camargo, Tams.	*1400 kilocycles* 250-D/100-N	ND	U	IV	4-8-67.
New	Sabinas Hidalgo, N.L.	*1400 kilocycles* 250	ND	U	IV	10-8-67.
XEF (In operation with 5,000W-D/500W-N, since 1-12-65).	Cd. Juarez, Chih.	*1430 kilocycles* 5,000-D/500-N	ND	U	III	1-12-65.
XEVG (Assignment deleted. See 620 kc/s).	Villahermosa, Tab.	*1440 kilocycles* 150	ND	U	IV	4-8-67.
XEZC (Correction of an omission: Assignment of call letters. In operation since 9-21-65).	Rio Grande, Zac.	*1450 kilocycles* 250	ND	U	IV	9-21-65.
XEDS (Correction of an omission: In operation since 10-21-61).	Colima, Col.	*1470 kilocycles* 1,000-D/200-N	ND	U	III-D, IV-N	10-21-61.
XEMS (This cancels the notification to change frequency to 1500 kc/s, included in List 228. Continue on 1490 kc/s).	Matamoros, Tams.	*1490 kilocycles* 250	ND	U	IV	4-8-67.
XEMS (This cancels the notification of a change to 1500 kc/s, notified in List 228. Continue on 1490 kc/s—see 1490 kc/s).	Matamoros, Tams.	*1500 kilocycles* 1,000	DA-2	U	II	4-8-67.
XEVL (Assignment deleted).	Villahermosa, Tab.	*1590 kilocycles* 500	ND	D	III	4-8-67.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8601; Filed, July 24, 1967; 8:51 a.m.]

[Docket Nos. 17555-17558; FCC 67M-1175]

AZALEA CORP. ET AL.

Order Scheduling Hearing

In re applications of Azalea Corp., Mobile, Ala., Docket No. 17555, File No. BP-17340; W.G.O.K., Inc. (WGOK), Mobile, Ala., Docket No. 17556, File No. BP-17398; People's Progressive Radio, Inc., Mobile, Ala., Docket No. 17557, File No. BP-17477; Mobile Broadcast Service, Inc., Mobile, Ala., Docket No. 17558, File No. BP-17478; for construction permits.

It is ordered, That Elizabeth C. Smith shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on September 20, 1967, at 10 a.m.; and that a prehearing conference shall be held on July 25, 1967, commencing at 9 a.m.: *And, it is further ordered,* That all proceedings shall take place in the Offices of the Commission, Washington, D.C.

Issued: June 30, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8520; Filed, July 24, 1967; 8:45 a.m.]

[Docket No. 17469; FCC 67M-11911]

BLUEFIELD TELEVISION CABLE

Order Rescheduling Hearing

In re petition of Bluefield Television Cable, Bluefield, W. Va., request for waiver of § 74.1103 of the Commission's rules and cease and desist order to be directed against Bluefield Cable Corp., owner and operator of a CATV system at Bluefield, W. Va.

Pending action on petitions for termination and reconsideration: *It is ordered,* That the hearing is further rescheduled from July 25 to September 11, 1967.

Issued: July 14, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8521; Filed, July 24, 1967; 8:45 a.m.]

[Docket No. 16070; FCC 67M-1186]

COMMUNICATIONS SATELLITE CORP.

Order Scheduling Prehearing Conference

In the matter of Communications Satellite Corporation, charges, practices, classifications, rates and regulations for and in connection with the leasing of voice grade and television channels to common carriers authorized by the Federal Communications Commission, between Andover, Maine, and a communications-satellite in connection with the establishment of communication paths between points in the United States and Europe for the transmission and reception of voice, record, data, telephoto, facsimile, television and other signals.

The Hearing Examiner having under consideration an unopposed "Motion to Reschedule Hearing Conference" filed July 5, 1967, by Communications Satellite Corporation (Comsat) in the above matter, and

It appearing that the Hearing Examiner has already orally continued the matter without date but that a formal order establishing a date certain is appropriate,

It is ordered, That the further prehearing conference heretofore continued without date is hereby scheduled to commence at 10 a.m., September 7, 1967, in the Commission's offices in Washington, D.C.

Issued: July 13, 1967.

Released: July 20, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8594; Filed, July 24, 1967; 8:50 a.m.]

[Docket Nos. 17256, 17257; FCC 67R-297]

EAST ST. LOUIS BROADCASTING CO., INC., AND METRO-EAST BROADCASTING, INC.

Memorandum Opinion and Order Enlarging Issues

In re applications of East St. Louis Broadcasting Co., Inc., East St. Louis, Ill., Docket No. 17256, File No. BP-16579; Metro-East Broadcasting, Inc., East St. Louis, Ill., Docket No. 17257, File No. BP-16682; for construction permits.

1. This proceeding involves the applications of East St. Louis Broadcasting Co., Inc. (East St. Louis), and Metro-East Broadcasting, Inc. (Metro-East), each requesting authority to construct a new standard broadcast station at East St. Louis, Ill. The applications were designated for hearing by order, FCC 67-284, 7 FCC 2d 66, released March 9, 1967. Presently before the Review Board is a petition to enlarge issues, filed by Metro-East on March 29, 1967, requesting the addition of financial and site availability issues against East St. Louis. In a supplement to its petition, filed on June 8, 1967, Metro-East requests the addition of issues relating to the character qualifications of East St. Louis.[1]

2. In support of its request for financial issues, Metro-East alleges that East St. Louis will require $151,541 in order to construct and operate its station for 1 year ($115,000 in operating expenses plus $55,244 construction costs minus $18,703 already expended); that East St. Louis' application reflects that it has $144,184 available ($47,901 funds on deposit, $80,643 in bond obligations, and $15,640 deferred credit); and that part of the bond obligations will be paid in services rendered by individual stockholders, thereby further reducing the amount of cash available to East St. Louis to $115,933. In addition, Metro-East alleges that East St. Louis' allocation of $7,347 for its antenna system is far too low because its application reflects a guyed tower whereas its request for an FAA clearance reflects a self-supporting tower; the cost of a guyed tower would be $12,453; and the cost of a self-supporting tower would be $28,195.[2] Finally, Metro-East questions the availability of part of the $80,642 in bond obligations, pointing out that $28,250 of the amount will be paid in services to the corporation, and alleging that this amount cannot be relied upon because no showing has been made of the type of services to be performed. Moreover, Metro-East submits, various stockholders whose cash commitment totals $37,190 have not shown the ability to meet their commitments, and other stockholders, with cash commitments of $4,530 are able to meet their commitments only by a substitution of services in lieu of cash. To support its request for a site availability issue, Metro-East contends that the East St. Louis City Council adopted the "PACE Plan" (a comprehensive urban renewal plan) on March 22, 1967; and that the site specified by East St. Louis is located in the area covered by this plan. A statement from the Director of Urban Renewal and Planning was submitted with the petition, in which he states that East St. Louis must obtain a special use authorization for its proposed site, and that the proposed site is not in conformance with the "PACE Plan."

3. East St. Louis, opposing the requested financial issues, submitted updated financial information,[3] reflecting that it will require $159,061.31 in order to construct its proposal (including the cost of a self-supporting tower in lieu of a guyed tower) and operate for 1 year.[4] To meet this requirement, East St. Louis alleges that it has available funds in an amount of $213,225, consisting of $5,340 in stock commitments, $145,885 in bond commitments ($70,573 of the stock and bond commitments have been paid), and $62,000 in first year's operating revenues. The latter figure is supported by 45 letters of commitment from potential advertisers. With regard to the commitments of its stockholders, East St. Louis submitted updated balance sheets for all of the stockholders whose ability to meet their commitments was challenged by Metro-East, and avers that all except two have sufficient current assets in excess of liabilities to meet their commitments, without regard to the services they were to perform; and the remaining two have loan commitments to meet their obligations. Although the nature of the services to be performed by the stockholders was specified in a February 28, 1966, amendment to its application, East St. Louis states, the matter of services is now moot because all of the persons involved have indicated a willingness to pay cash instead of services if determined to be in the best interests of the applicant company. With regard to its proposed site, East St. Louis states that the site was purchased only after conversations with the Director of Urban Renewal and Planning (a stockholder in Metro-East), who stated that the area could be used for a broadcast station. To support its position, East St. Louis submitted two letters from a local attorney, who states in one that it is "inconceivable" that a special use permit will not be granted and that this use is not inconsistent with the PACE Plan; and, in the other, that he discussed the PACE Plan with one of the architects who designed it and was told that this plan was for future development, and was not intended to block present development. An affidavit from the President of East St. Louis was also submitted, in which he states that he and a consulting engineer visited the architect on May 4, 1967; that the architect told him that the station was consistent with existing zoning and, if properly designed, would "fit nicely" into the design of the PACE Plan; that he (the architect) would write a letter to that effect to the Chairman of the local PACE organization; that he returned to the architect's office later that day to pick up the letter, with local counsel, but was told by the architect that "after talking to certain persons," the architect had decided not to send the letter. With a supplement to its opposition, East St. Louis filed a letter from the Director of Urban Renewal and Planning, indicating that the Board of Appeals granted East St. Louis' request for "Special Use" for the purpose of erecting a radio station.

4. In reply, Metro-East concedes that East St. Louis has established reasonable assurance of the availability of its transmitter site, but asserts that the new financial information submitted does not show that East St. Louis is financially qualified. Metro-East computes East St. Louis' cash requirement to be $140,385 (taking into account expenses already paid) and the amount available at $117,472 (taking into account the remaining amount due from commitments and the funds presently on deposit); and challenges East St. Louis' estimate of construction costs; its reliance upon anticipated revenues; and the ability of its stockholders to meet their commitments. Specifically, Metro-East claims that although the East St. Louis application reflects that its studio will be leased for $1,200 per year, its President testified at the zoning hearing that a studio would be constructed, and that a "picturesque" tower would be erected; the architect contacted by East St. Louis' President anticipated that the building proposed would cost between $40,000 and $50,000; and it is doubtful if the tower could be erected for $12,841, as proposed. With regard to the advertising commitments, Metro-East points out that they are almost 2 years old; they are in varying degrees of firmness; and alleges that one of the commitments is from a business no longer in existence, and another was signed by a manager who lacked authority to bind the business. A third commitment is challenged in a letter from the "major owner" of a business, who states that while the commitment letter was signed by a stockholder, that stockholder does not remember either writing or signing the letter. Finally, Metro-East questions various items listed as "current

[1] The following pleadings are before the Review Board: (a) Petition to enlarge issues, filed on Mar. 29, 1967, by Metro-East; (b) Broadcast Bureau's comments, filed on May 8, 1967; (c) opposition, filed on May 8, 1967, by East St. Louis; (d) supplement to (c), filed on June 1, 1967, by East St. Louis; (e) supplement to (a), filed on June 8, 1967, by Metro-East; (f) reply to (b), filed on June 8, 1967, by Metro-East; (g) reply of Metro-East to (c), filed on June 8, 1967; (h) reply to (e), filed on June 30, 1967, by East St. Louis; (i) Broadcast Bureau's comments on (e), filed on June 30, 1967; and (j) reply to (h), filed on July 12, 1967, by Metro-East.

[2] Estimates from the Utility Tower Co. were submitted to support the alleged cost figures.

[3] The updated financial information, including new estimates from the equipment supplier, is contained in an amendment to East St. Louis' application accepted on June 8, 1967 (FCC 67M-951). The change from a guyed to a self-supporting tower (also contained in the amendment) was made, East St. Louis states, in order to conform to the wishes of the zoning authorities.

[4] A detailed breakdown of East St. Louis' operating costs is included in the petition, which reflects the increased tower costs.

assets" in the balance sheets of seven of the stockholders, contending that they have not shown the ability to meet their respective commitments.

5. The allegations contained in Metro-East's reply, together with certain new allegations form the basis of Metro-East's request for issues inquiring into the character qualifications of East St. Louis, contained in the supplement to the subject petition. First, Metro-East relies upon the alleged discrepancy between East St. Louis' application, wherein it is stated that the studio will be leased, and the testimony of East St. Louis' president at the zoning hearing to the effect that a new studio would be constructed. Next, Metro-East contends that in view of the representations made to the zoning authorities regarding the attractiveness of East St. Louis' proposed tower, the cost of constructing that tower has been understated. Reliance is also placed on a letter from the architect of the PACE Plan, who states that he did not inform counsel for East St. Louis that the tower was in conformance with present zoning laws (counsel told him), or that the PACE Plan was merely meant for the future, and was not told that East St. Louis was in a competitive situation. Metro-East alleges that East St. Louis represented in its February 28, 1966, amendment that it had $4,935.88 on deposit at a particular bank, whereas in fact it had only $467.95. Finally, Metro-East relies upon the letter disclaiming the advertising commitment (see par. 4, supra).[5]

6. In response to the allegations, East St. Louis submits that there is no conflict between the representations in its application and those made at the zoning hearing because the new studio will be constructed by one of the East St. Louis stockholders and leased to the applicant for $1,200 per year, as indicated in the application.[6] The proposed tower will be constructed as specified in its amended application, East St. Louis maintains, and the correct specifications were given to the zoning authorities. Various affidavits were submitted by East St. Louis relating to the details of the conversations with the architect. With regard to the bank balance, East St. Louis concedes that it did not correctly reflect a reduction of that balance in one of its amendments, but contends that this was an inadvertent error corrected in a subsequent amendment; and with regard to the challenged advertising commitment, states that it has no knowledge that the commitment was not authentic.

7. The Board is of the opinion that the only matter of substance raised in the voluminous pleadings before it relates to East St. Louis' financial qualifications. The request for a site availability issue is based upon alleged zoning difficulties, and, since East St. Louis has now obtained an appropriate use authorization, no question remains. The request for character issues is contained in an unauthorized supplemental pleading which could be dismissed on procedural grounds alone. However, in view of the serious nature of the charges (and countercharges) made by the applicants we have examined the allegations, and find that they are either based upon a combination of strained interpretations of facts and speculations, or have been adequately refuted by responsive pleadings. As to East St. Louis' estimated costs of construction, we do not regard the fact that this applicant attempted to show at a zoning hearing that its proposed tower would be attractive as an adequate basis for disputing the price quoted for the tower by an equipment supplier[7] in the absence of specific factual allegations indicating that representations were made that the tower would be different from that proposed in the application. The apparent inconsistency as to whether the studio would be built or leased is adequately explained by the stockholder construction and lease arrangement. We have carefully examined and compared the architect's version of his conversations with East St. Louis' principals and agents with those submitted by the other participants to these discussions, and we find that, except for certain minor details,[8] there is no conflict as to the substance of these conversations. Thus, all agree that the architect stated that the PACE Plan was to govern future development, that the use of the site as proposed would not be barred by the PACE Plan, that a letter to that effect was to be written by the architect, and that the architect subsequently changed his mind about writing the letter. Finally, we have no reason to suspect that the incorrect bank balance contained in one of the East St. Louis amendments was other than an inadvertent error, as East St. Louis claims, or that there was anything nefarious in the disputed commitment letter.

8. As previously indicated, we find no valid reason for adding an issue inquiring into East St. Louis' estimated costs of construction and operation. However, Metro-East has pointed out deficiencies in some of the showings made by East St. Louis' stockholders to meet their financial commitments. For example, Clifford Haworth has not shown the ability to meet his $1,750 commitment since more than $9,100 of the $10,521 listed on his balance sheet as current assets consists of accounts receivable and merchandise inventory, the liquidity of which has not been established; and Leon Namirr has not shown the ability to meet his $7,020 commitment since his balance sheet reflects only $5,663 in current assets over liabilities, and a $2,000 bank letter of commitment to Namirr is completely devoid of any of the terms and conditions for the loan. All of East St. Louis' bond commitments were made, in part, "in consideration of other subscriptions" and we therefore believe that a failure to meet any of them places them all in doubt. Cf. Lebanon Valley Radio, 1 FCC 2d 940 (1965). Moreover, even assuming that all of the subscribers could meet their commitments, we agree with Metro-East that East St. Louis would have to rely upon approximately $23,000 in anticipated revenues (see par. 4, supra) and that the letters of commitment, standing alone, are insufficient to permit such reliance. The addition of financial issues is therefore required. The burden of proceeding and the burden of proof under the added issues will be on East St. Louis.

Accordingly, it is ordered, That the petition to enlarge issues, filed on March 29, 1967, by Metro-East Broadcasting, Inc., is granted to the extent indicated below, and denied in all other respects; that the supplement to petition to enlarge issues, filed by Metro-East Broadcasting, Inc., on June 8, 1967, is denied; and

It is further ordered, That the issues in this proceeding are enlarged by the addition of the following issues:

(a) To determine whether the stockholders of East St. Louis Broadcasting Co., Inc., are financially able to meet their respective commitments.

(b) To determine the basis of East St. Louis Broadcasting Co., Inc.'s estimated revenues for the first year of operation.

(c) To determine in light of the evidence adduced whether East St. Louis Broadcasting Co., Inc., has demonstrated a reasonable likelihood of construction and continuing operation of its proposed station in the public interest.

Adopted: July 14, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8522; Filed, July 24, 1967; 8:45 a.m.]

[Docket Nos. 17570-17573; FCC 67-789]

ELIM BIBLE INSTITUTE, INC., ET AL.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of Elim Bible Institute, Inc., Lima, N.Y., requests: 1140 kc, 1 kw, Day, Class II, Docket No. 17570,

[5] Metro-East alleges that East St. Louis made certain other inconsistent statements, but we do not agree that those statements are inconsistent and therefore they will not be dealt with in detail. For example, East St. Louis stated in an amendment that it was changing the type of tower in order to get zoning approval, and told the zoning authorities that the change was for beautification.

[6] A letter from the stockholder was submitted to confirm these allegations. An amendment accepted July 30, 1967 (FCC 67M-1100), sets forth the details of the arrangements.

[7] The fact that another equipment supplier quoted a higher price is, in our opinion, meaningless in view of the price quoted by East St. Louis' equipment supplier.

[8] Whether or not the architect volunteered his estimate of the cost of the proposed studio, whether the statement regarding existing zoning was made by the architect or the lawyer, and the exact reference made to "future development" are questions which, however resolved, could not form the basis of significant conclusions regarding the applicants.

File No. BP-16869; "What the Bible Says, Inc.," Henrietta, N.Y., requests: 1140 kc, 500 w, Day, Class II, Docket No. 17571, File No. BP-17001; Oxbow Broadcasting Corp., Geneseo, N.Y., requests: 1140 kc, 500 w, Day, Class II, Docket No. 17572, File No. BP-17399; John B. Weeks, Warsaw, N.Y., requests: 1140 kc, 1 kw, DA, Day, Class II, Docket No. 17573, File No. BP-17400; for construction permits.

1. The Commission has before it the above-captioned applications which are mutually exclusive in that simultaneous operation of the stations as proposed would result in mutually destructive interference.

2. An examination of the proposal of "What the Bible Says, Inc." ("Bible Says") indicates that a total of $45,000 is needed to construct and operate the proposed station for a period of 1 year without revenue. This applicant has submitted an affidavit from a banking institution showing deposits of $10,450, and a letter from a second banking institution showing applicant to be the recipient of a legacy of $1,000. As to the remainder of its resources, applicant relies on a detailed statement of the president of the parent corporation, the Elim Tabernacle Church of Rochester, Inc., which is signed pursuant to a corporate resolution stating that "* * * out of the funds (cash) accruing to the church from the sale of its property to the city of Rochester, the sum of sixty thousand dollars ($60,000) will be made available and donated to "What the Bible Says, Inc.," to build the proposed radio station and to operate it for a period of at least 1 year." However, although applicant's statements indicate that the sale (as part of an urban renewal program currently in progress) will ultimately be consummated and the money forthcoming so as to be available for the applicant's needs herein, there is no indication in the application that the city is presently legally committed to the purchase of the property. Therefore, this potential source of funds cannot be considered as part of its available resources.

3. The Elim proposal is for the town of Lima, N.Y., which has a population of 1,366 and is located approximately 17.5 miles south of Rochester, N.Y., which has a population of 318,611.[1] On the basis of Commission studies there is a penetration of Rochester's City boundary by the applicant's predicted 5 mv/m daytime contour which raises a presumption under the Commission's policy statement on Section 307(b); Considerations for Standard Broadcast Facilities Involving Suburban Communities, 6 RR 2d 190, 2 FCC 2d 1901 (Dec. 22, 1965), that this applicant realistically proposes to serve Rochester rather than Lima. Applicant has not provided data or arguments which would overcome this presumption and an appropriate issue is therefore included.

4. The Bible Says proposal is for the town of Henrietta, N.Y., which has a population of 11,598 and is located 7 miles south of Rochester. In this case the applicant's predicted 5 mv/m contour completely encompasses the city of Rochester. Inasmuch as this applicant has not provided data or arguments which would overcome the presumption that the applicant intends to serve Rochester rather than Henrietta, a 307 (b) suburban community issue is included as to this applicant. Furthermore, this applicant's 25 mv/m groundwave contour may not provide satisfactory service to the business area of Henrietta and therefore a coverage issue is included.

5. Examination of the Elim and Bible Says applications indicates that they propose specialized religious programing. Since the other two applicants propose general programing formats, there appear to be substantial and material differences between the applicants' plans which should be accorded decisional significance. Therefore, these differences will be considered within the context of the comparative issue. Policy Statement on Comparative Broadcasting Hearings, 1 FCC 2d 393, 5 RR 2d 1901, at 1911, In re Ward L. Jones, FCC 67-82, released January 25, 1967.

6. The Commission finds that, except as indicated by the issues specified below, the applicants are qualified to construct, own and operate as proposed, but since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding upon the issues set forth below.

Accordingly, it is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the applications and the availability of other primary service to such areas and populations.

2. To determine with respect to the application of "What the Bible Says, Inc.":

(a) Whether the $60,000 in proceeds from the sale of Elim Tabernacle Church is available to the applicant.

(b) Whether, in the light of the evidence adduced pursuant to the above subissue, the applicant is financially qualified.

3. To determine whether the proposal of "What the Bible Says, Inc.," would provide coverage of the city sought to be served, as required by § 73.188(b)(1) of the Commission's rules, and, if not, whether circumstances exist which would warrant a waiver of said Section.

4. To determine whether the proposal of Elim Bible Institute, Inc., will realistically provide a local transmission facility for its specified station location or for another larger community, in light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programing needs;

(b) The extent to which the needs of the specified station location are being met by existing standard broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programing needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

5. To determine, in the event that it is concluded pursuant to the foregoing issue (4) that the proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the rules for standard broadcast stations assigned to the most populous community for which it is determined that the proposal will realistically provide a local transmission service, namely, Rochester, N.Y.

6. To determine whether the proposal of "What the Bible Says, Inc.," will realistically provide a local transmission facility for its specified station location or for another larger community, in light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programing needs;

(b) The extent to which the needs of the specified station location are being met by existing standard broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programing needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

7. To determine, in the event that it is concluded pursuant to the foregoing issue (6) that the proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the rules for standard broadcast stations assigned to the most populous community for which it is determined that the proposal will realistically provide a local transmission service; namely, Rochester, N.Y.

8. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

9. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the operations proposed in the above-captioned applications would best serve the public interest.

[1] According to the 1960 U.S. Census.

10. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications should be granted.

It is further ordered, That, in the event of a grant of any of the applications, the construction permit shall contain the following conditions:

Pending a final decision in Docket No. 14419 with respect to presunrise operation with daytime facilities, the present provisions of § 73.87 of the Commission's rules are not extended to this authorization, and such operation is precluded.

Permittee shall accept any overlap that may result from a grant of the application of Lawrence County Broadcasting Corp., File No. BP-16602, New Castle, Pa.

It is further ordered, That, in the event of a grant of the application of "What the Bible Says, Inc.," the construction permit shall specify the following:

Permittee shall assume responsibility for the elimination of interference due to external cross-modulation and for the installation and adjustment of filter circuits or other equipment in the antenna system of the proposed operation and of Stations WROC and WBBF or any other stations which may be necessary to prevent adverse effects due to internal cross-modulation and reradiation; and, prior to the erection of the antenna towers and subsequent thereto, sufficient field intensity measurements shall be made on these specified stations to establish that the radiation patterns have not been adversely affected due to reradiation. In addition, field observations shall be made to determine whether spurious emissions exist, and any objectionable interference problems resulting therefrom shall be eliminated.

It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: July 5, 1967.

Released: July 19, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8523; Filed, July 24, 1967; 8:45 a.m.]

[Docket Nos. 17058-17060; FCC 67M-1177]

FINE MUSIC, INC. (WFMI), ET AL.

Order Continuing Hearing

In re applications of Fine Music, Inc. (WFMI), Montgomery, Ala., Docket No. 17058, File No. BP-16502; Tennessee Valley Broadcasting Co., Inc., Huntsville, Ala., Docket No. 17059, File No. BP-16609; Rocket City Broadcasting Co., Inc., Huntsville, Ala., Docket No. 17060, File No. BP-16721; for standard broadcast construction permits.

Upon oral request of counsel for Rocket City Broadcasting Co., Inc., one of the parties in the above-entitled matter, requesting changes in the scheduled procedural dates, and without objection on the part of any other party: *It is ordered,* That said oral request, be, and the same is, hereby granted, and that the following dates shall supersede those presently established:

Notification of witnesses presently scheduled for July 12 is continued to July 26, 1967; and

Hearing presently scheduled for July 17 is continued to July 31, 1967.

Issued: July 12, 1967.

Released: July 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8524; Filed, July 24, 1967; 8:45 a.m.]

[Docket Nos. 15826, 15827; FCC 67R-294]

KXYZ TELEVISION, INC., AND CREST BROADCASTING CO.

Decision and Remand Enlarging Issues

In re applications KXYZ Television, Inc., Houston, Tex., Docket No. 15826, File No. BPCT-3220; Crest Broadcasting Co., Houston, Tex., Docket No. 15827, File No. BPCT-3302; for construction permit.

Appearances: James A. McKenna, Jr., Robert W. Coll, and David S. Stevens on behalf of KXYZ Television, Inc.; Benedict P. Cottone and W. Ervin James on behalf of Crest Broadcasting Co.; and John F. Reilly on behalf of the Chief, Broadcast Bureau, Federal Communications Commission.

1. Here we are faced again with the threshold and troublesome questions relating to remand of a proceeding in the post-oral argument terminal stage of an already long, complex and extensive hearing.[1] As shown by paragraph 3, infra, KXYZ's successive and alternative requests looking toward remand were filed after the issuance of an initial decision (FCC 66D-31) by Hearing Examiner Chester F. Naumowicz, proposing a grant of the application of Crest, and a denial of the application of KXYZ. The Examiner's denial of the KXYZ application was dictated by his conclusion that KXYZ did not meet the Ultravision financial qualification standard which was placed in issue during the early stage of this proceeding, in that neither KXYZ's estimated cost figures nor its estimated first year revenues, upon which qualification depended, were shown on the record to be reliable.

2. The chief basis for the Examiner's determination that KXYZ failed to establish its financial qualifications was the fact that it relied for a major portion of its cost and revenue estimates upon programs to be supplied, without charge to KXYZ by an unestablished[2] network (Unisphere Broadcasting System, hereinafter UBS), whose projected operation was not only based upon an indefinite contingency, but whose programs were, likewise, based upon such indefinite contingency. While the Examiner held that his conclusion on the financial question was dispositive of the KXYZ application, he also reached conclusions on the comparative issue, and he predicated his grant to Crest on favorable resolution of a basic financial qualification issue directed against Crest, as well as on the comparative issue.

3. The successive and alterative post-initial decision and post-oral argument requests of KXYZ looking toward full remand of this proceeding are shown in the following chronology:

(a) In its exceptions, brief and oral argument, KXYZ requested that if the Review Board agreed with the Examiner that there was a substantial doubt as to the ability of UBS to provide the programs relied upon by it for its revenue estimate, the case be remanded to the Examiner with a special issue as to the legal and financial qualifications of UBS. KXYZ claimed that the Examiner's findings and conclusions relative to the ability of UBS to furnish programs went beyond the proper scope of the issues in this proceeding and deprived KXYZ of any fair or reasonable opportunity to meet and establish the qualifications of its proposed network.

(b) At the conclusion of the oral argument before a panel of the Board on February 9, 1967, counsel for KXYZ

[1] This proceeding involves two conflicting applications, both seeking a construction permit for a new UHF television facility on Channel 26, at Houston, Tex. The applications were filed in 1964, designated for hearing in 1965, and were heard in a consolidated proceeding commencing May 26, 1965, continued on several days in December 1965, and January and March 1966, when the record was closed on March 26, 1966. On June 22, 1966, Hearing Examiner Chester F. Naumowicz, Jr., released his initial decision (FCC 66D-31). Exceptions to the initial decision were filed on August 5, 1966, by KXYZ and by the Broadcast Bureau; reply of Crest was filed on August 24, 1966, and oral argument was held before a panel of the Board on February 9, 1967. Thereafter, KXYZ filed successive petitions which if granted would result in a full remand of this proceeding both with respect to Crest's, as well as KXYZ's own application. (See, par. 3, infra.) Pleadings concerning these post-oral argument petitions were completed on March 27, 1967.

[2] See, pars. 26-30, infra.

stated that a motion to reopen the record on matters not involved in the argument would be filed.

(c) On February 10, 1967, KXYZ filed a motion to reopen the record and remand the case for further hearing on additional issues relative to the financial and character qualifications of Crest on the grounds that Bernard Calkins, a 25-percent stock subscriber of Crest, no longer had a bank loan commitment of $250,000 on which he relied to fulfill his subscription commitment to Crest; and that Crest failed to notify the Commission of changes in Mr. Calkins' financial circumstances and business interests.

(d) On February 24, 1967, KXYZ filed a petition for leave to amend its application to permit consideration of an alternative programing and financial proposal, which amendment, if accepted, would by its very nature, require a remand of KXYZ's application for rehearing on the same basic issue of its financial qualifications under the Ultravision standard, on which the application was previously heard.

4. For the reasons detailed in paras. 40–45, infra, the Board has concluded that KXYZ was aware of or could, with due diligence, have presented the alleged new facts set forth in paragraph 3(c) above, concerning Mr. Calkins of the Crest Co. at an earlier date and in any event, prior to the scheduled oral argument before the Board held on February 9, 1967; nevertheless, it is the Board's view that KXYZ's post-oral argument pleadings relating to Mr. Calkins create substantial questions with respect (a) to possible misrepresentations or concealment of material facts by Mr. Calkins, if not Crest, concerning his personal bank loan; (b) to the knowledge, if any, of Crest's remaining six stockholders of these newly alleged facts concerning the alleged unavailability of Calkins' bank loan; and (c) if so (i) to the failure of Crest to report these changed circumstances in accordance with § 1.65 of the Commission's rules; and (ii) to the resultant effect of these circumstances, upon the applicant's financial, as well as other, qualifications. In view of these substantial questions, the Board believes it must, of necessity, reopen and remand the proceeding for further hearing on the Crest application on new issues specified, infra, relating to the availability of Calkins' bank loan. As our reasons are discussed infra, they need not be repeated here; however, we note in passing that these newly alleged facts concerning Calkins and Crest, make a further evidentiary hearing mandatory because on the basis of this new development, it cannot be determined in accordance with the requirements of section 309 of the Communications Act, whether public interest would or would not be served by a grant of Crest's application.

5. In passing the Board further notes that the present situation with respect to Crest is markedly different than the situation concerning KXYZ. As will be more fully shown in paragraphs 34–39, infra, there are no new developments or changed circumstances as to KXYZ arising after the close of the record or after the initial decision which impair the evidentiary facts adduced at the hearing, foreclosing at this time, as in the case of Crest, the required public interest determination. As will also be shown below, KXYZ had adequate notice under the Ultravision financial qualification issue, of the requirements of the issue, and of its own burden of proof established by law on the applicant in accordance with section 309(e) of the Communications Act,[3] to prove, among other matters, that it, KXYZ would receive from UBS the programs it had represented as being available to it without cost and as being available as its source of revenues.

6. However, apart from introducing the affiliation agreement with UBS (an unestablished network), KXYZ stood apart from this vital aspect of its case as if KXYZ had nothing to do with it. In pursuing this hard position throughout the course of this hearing irrespective of developments during the evidentiary process, KXYZ maintained steadfastly—albeit erroneously—that the status of UBS as an unestablished network is no different than that of a longtime existent network, and that the KXYZ–UBS affiliation agreement, per se, established the availability of its proposed programs. It is true, as urged by KXYZ that, under some circumstances not involved here, the Commission has noticed the commonly recognized fact that longtime existing networks are, in fact, program suppliers based on their established practices, as well as the plethora of information in the Commission's files which establishes that they are, in fact, program suppliers. This is done by the administrative practice known as the official notice doctrine, following the traditional judicial notice concept long familiar in court proceedings. As stated in the Attorney General's Manual on the Administrative Procedure Act, page 79, the purpose of the official notice doctrine is to avoid "laborious proof of what is obvious and notorious," subject to opportunity by opposing parties for rebuttal or explanation. As stated in Jones on Evidence, Volume 1, Chapter IV, paragraph 105, page 188 (a) "The maxim that what is known need not be proved, manifesta (or notoria) * * * may be traced far back in the civil and the canon law; indeed, it is probably coeval with legal procedure itself * * *"; and (b) "the fundamental guide in determining the facts which may be judicially known is notoriety or the common and general knowledge" of well-informed persons.

7. Applying these tests relating to judicial or official notice, it is evident that notice cannot be taken of the ability of an unestablished network to supply programs because the essential element—common recognition—is lacking. Before going any further perhaps it should be emphasized too that at no point during this proceeding did KXYZ ask that official notice be taken of any information in the Commission's files which would establish the availability of its assumed UBS network programs. As indicated above, apart from the common recognition of longtime existing networks as program suppliers, there is a plethora of information in the Commission's files which establishes that longtime existent networks are, in fact, program suppliers. However, except for the existence of its name, the Commission's files are devoid of any information whatsoever concerning UBS. Hence, in the absence of competent evidence establishing the availability of such UBS network programs, it is impossible to make a finding that KXYZ will have these programs available for a substantial portion of its revenues.

8. In short, it is the Board's view as shown by paragraphs 12–32 below, that KXYZ's position in its exceptions, brief, and oral argument, is totally lacking in merit because it stems from KXYZ's own disinclination to sustain its own burden of proof under the Ultravision financial qualification issue and to establish on this record by convincing evidence that it has reasonable assurance of the availability of the bulk of the programs upon which it relied for its cost and revenue estimates. Under this circumstance, the Board finds no justification whatsoever for KXYZ's belatedly filed restorative amendment which by its very nature, if granted, would require a remand of KXYZ's application for rehearing on the identical issue on which it has already been accorded one fair and full hearing. Certainly, if the impasse with respect to Crest's application had not occurred, it cannot be doubted that there would have been no justification for a successive retrial of KXYZ's application, and the doctrine of administrative finality would have required a denial of the KXYZ's application on the basis of the present record. Analagous cases support our conclusion in this regard.[4]

9. Stated another way, it is the Board's view that if a successive retrial of KXYZ's application was permitted solely because of the further hearing required on Crest's application, we would, in effect, be granting extraordinary relief to KXYZ and rewarding it for its own voluntary inactions and delays, and its voluntary nonacceptance of (a) notice of the issue; (b) elementary principles of law governing the doctrine of official notice; and (c) well established hearing principles and procedures. This we cannot do. Although retention of a choice

[3] See, pars. 17–23, and footnote 11, infra.

[4] Cf. WNOW, Inc., 4 RR 2d 857, 860 (1965); WEOK Broadcasting Corp., 4 RR 2d 503 (1965); Central Broadcasting Co., 7 RR 2d 140, aff'd Central Broadcasting Co., v. FCC, —— F. 2d ——, 8 RR 2d 2104 (1966); Louis Adelman, 18 RR 1068 (1960), aff'd sub nom Guinan v. FCC, 297 F. 2d 782, 22 RR 2026 (1961); Mid-America Broadcasting Corp., 4 RR 288, 293–4 (1948); Compare also, Colorado Radio Corp. v. FCC, 118 F. 2d 24, 26 (1941); Valley Telecasting Co., v. FCC, 336 F. 2d 914, 917 (1964).

of applicants is undoubtedly a public interest benefit, which we have weighed in reaching our conclusions with respect to KXYZ, we have also weighed the public interest benefits in the fair, orderly and sound administration of the Commission's business which would be frustrated and thwarted effectively if such a reward of rehearing was to be granted to KXYZ, under the circumstances of this case. Thus, while the Board has considered a full remand of this proceeding on the basis of KXYZ's belatedly filed successive and alternative petitions, we have concluded that the principles of fair, orderly and sound administration of the Commission's business compel (a) a conclusion which would preclude KXYZ from entangling captiously its own application in the further hearing with respect to Crest's application; (b) a denial of the KXYZ application on the basis of the present record; and (c) severance of KXYZ's application from this consolidated proceeding.

10. Finally, the Board finds no immediate or acute public need for additional television service in Houston at this time which might outweight any of the aforementioned public interest considerations requiring the denial of such extraordinary relief as a successive retrial to KXYZ. As indicated in paragraph 3 of the Examiner's initial decision, Houston has three operating VHF television stations; two outstanding UHF construction permits for television stations which are not as yet in operation; and numerous AM and FM stations. Another UHF channel is allocated to Rosenberg, Tex., which is located near Houston. A construction permit is outstanding for that channel, and Houston is within the Grade A coverage area of the proposed Rosenberg UHF station. Thus, assuming arguendo that the new issues with respect to Crest cannot be resolved in its favor after the further hearing, the Board believes that in this event public interest would best be served by the reopening of this channel for the filing of new applications, rather than at this time permitting KXYZ to have a successive retrial. In sum, we find no equities in KXYZ's position or any countervailing public interest considerations which support such extraordinary relief.

11. The details of our decision which follow are divided into the following parts:

	Paragraph Nos.
I. The KYXZ application	12–33
II. KXYZ's petition for leave to amend its application	34–39
III. KXYZ's petition to reopen the record as to Crest	40–45

Accordingly, we turn now to considerations relating to that part of the Hearing Examiner's initial decision with respect to a denial of KXYZ's application.

I. The KXYZ Application

12. The Board has considered (a) that part of the Hearing Examiner's initial decision relating to KXYZ set forth at paragraphs 1–28 of his findings of fact and at paragraphs 40–47 of his conclusions; (b) the exceptions thereto; and (c) the oral argument before the Board on February 9, 1967. Except insofar as these findings of fact and conclusions are modified by this decision and our rulings on the exceptions as set forth in the Appendix [4] hereto, they are adopted by the Board. As shown by paragraph 1 of the initial decision the KXYZ application was heard on the following Ultravision financial qualification issue: [5] (a) To determine the basis of each applicant's (1) estimated construction costs, and (a) estimated operating expenses for the first year of operation; (b) in the event that either applicant will depend upon operation revenues during the first year of operation to meet fixed costs and operating expenses, to determine the basis of each applicant's estimated revenues for the first year of operation; and (c) to determine, in the light of the evidence adduced, which of the applicants has demonstrated a reasonable likelihood of construction and continuing operation of its proposed station in the public interest.

13. Briefly stated, the pivotal factors of the KXYZ proposal are as follows: KXYZ estimates that it will require $727,578 to place its station on the air and operate it for a period of 1 year. Through stock subscriptions and bank loans it will have available the sum of $500,000. In order to establish its financial qualifications, it will require $227,578 in revenues. To meet this requirement, KXYZ has assumed the availability of programs (without cost) from an unestablished network—UBS—in estimating both its costs, as well as its predicted revenues, required for operation of the station. On the assumption of the availability of such network programs KXYZ estimated that it will receive $314,055.30 in first year revenue, consisting of $145,470 as its assumed compensation from the unestablished network, and $168,585.30 in local sales. As found and concluded by the Examiner in his Initial Decision, this record establishes that the foundation of KXYZ's cost and revenue estimates rest on the availability of programs from UBS; that UBS is wholly dependent upon a program supplier—the American Diversified Services (ADS)—for the bulk of the UBS programs to be carried by KXYZ; that ADS now owns or has the rights to the bulk of such programs; that UBS does not itself own or have the rights to such programs; and that ADS is not required or obligated to supply any programs to UBS until UBS has enlisted a minimum of 18 affiliates in the top 100 markets; and that UBS is considerably short of 18 affiliates at this time. The Board agrees with the Examiner's findings and conclusions in these respects. As further shown by our analysis of the record as set forth below, the Board also concludes that this record does not establish a reasonable likelihood of UBS meeting this contingency; nor has KXYZ demonstrated a reasonable likelihood of construction and continuing operation of its proposed station on the basis of its estimates of costs and revenues.

14. The Board also agrees with the Hearing Examiner's ultimate determination in these respects, and affirms his ultimate conclusion that KXYZ failed to meet its burden of proof under the Ultravision issue. Accordingly, the Board concludes that KXYZ's failure to establish its financial qualifications requires a denial of its application and severance of KXYZ's application from this consolidated proceeding, without regard to the comparative aspects of the Crest application, and without regard to the further hearing required on the Crest application. In short, our decision here is dispositive of the KXYZ application. However, in affirming that portion of the Hearing Examiner's initial decision relating to KXYZ, the Board believes that, since KXYZ's major challenge of the initial decision rests on its assertions grounded on "lack of notice" of its burden of proof and the standard of proof under Ultravision, it is necessary to amplify the Examiner's initial decision to show what occurred during the prehearing stages and the evidentiary process of this proceeding.

15. These are the background prehearing facts: Although the KXYZ and Crest applications were designated for hearing on February 3, 1965, on standard financial qualifications issues and standard comparative issues, a few months later and during the prehearing stages of the proceeding, the Commission in Ultravision Broadcasting Co., 1 FCC 2d 544, 5 RR 2d 343 (1965) adopted a new standard for determining the financial qualifications of broadcast applicants so as to permit inquiry into the basis of each applicant's estimated construction costs and estimated operating expenses during the first year of operation. The Commission in Ultravision further imposed the requirement that evidentiary proof be submitted to support such estimated costs and expenses, and made clear that an applicant would be required to demonstrate its ability to meet all fixed charges and operating expenses during the first year of operation either by proof that adequate funds are available and committed to the proposed station for this purpose without income, or by "a convincing evidentiary showing that the available and committed funds will be supplemented by sufficient advertising or other revenue to enable the applicant to discharge its financial obligations during the first year" of operation. (See 5 RR 2d 343, 347.)

16. In its Ultravision decision, the Commission further made clear that programing and effectuation of program

[4] Appendix filed as part of original document.

[5] Although this issue also related to Crest's application, and Crest made its showing on its costs to place the station on the air and operate for a 1-year period, Crest was not dependent on predicted revenues to meet these costs, and thus Crest did not offer any revenue predictions. Since Crest was entitled under the Ultravision doctrine to forego the required testing on the Ultravision standards if it had adequate funds without revenues, the Board, like the Hearing Examiner, accords no weight to the estimate of first year revenues set forth in Crest's application.

proposals are integral factors to be considered in determining the financial qualifications of applicants. The Commission stated that "Applicants for broadcast stations are expected to plan carefully their programing and other operations" and that they should submit evidentiary proof concerning the amounts allocated for staffing, programing, fixed charges and other expenses during the first year of operation and "to establish that the funds allocated for programing are reasonably likely to suffice for effectuation of program proposals."[6] The Commission further stated that since the views expressed in Ultravision represent a departure from the policy concerning the standard of financial qualifications applied in the past, applicants should be afforded an opportunity to revise their program proposals as to hours of broadcast or program content.

17. In Ultravision, the Commission also emphasized that where the viability of the proposed facility during the first year is dependent upon income, the accuracy of the estimate becomes a critical factor in determining whether a continuing operation is likely. The Commission expressly stated that "In those instances where operation during the first year is dependent upon estimated advertising revenues, the applicant will be required to establish the validity of the estimate." (1 FCC 2d 544, 547–8.) Thus, it is clear that under the Ultravision standard the burden is the applicant's and the burden borne by the applicant is not simply one to show what factor such as, an affiliation with an unestablished network) was the basis for the applicant's estimates, but the standard contemplates a "convincing evidentiary showing" of the reliability of the basis as well as the accuracy of the estimates arrived at.

18. In a public notice adopted July 7, 1965 (FCC 65–595, released July 8, 1965, 1 FCC 2d 550, 5 RR 2d 349, 350), the Commission clarified the applicability of the new financial qualifications standard, stating that "the new standard will be applied to all applications, whether now pending or hereafter filed, for new UHF–TV facilities in markets where three or more VHF stations are presently in operation." Since both KXYZ and Crest seek a new UHF–TV station in Houston where there are three VHF stations in operation, the Ultravision standard became applicable to this proceeding.

19. In order to remove any doubt as to the applicability of the Ultravision standard in this case, the parties agreed at a prehearing conference on July 21, 1965, that the Examiner should certify the matter to the Review Board (FCC 65M–956, released July 22, 1965). By order (FCC 65R–331, released Sept. 3, 1965), the Board directed that the standards set forth in the Commission's clarification notice in the Ultravision proceeding were applicable to the determination of the applicants' financial qualifications under the issues designated in this proceeding, without the necessity of enlarging or modifying existing standard financial qualifications issues.

20. At a further prehearing conference held on September 14, 1965, the parties agreed that by October 6, 1965, they would prepare and submit any amendment or additional exhibits which they believed should be considered in connection with the Ultravision standard. The Examiner implemented this agreement by an order (FCC 65M–1193, released Sept. 15, 1965) wherein he directed the parties to submit such amendments and additional supplemental hearing exhibits which "in their judgment they are required or permitted to submit."

21. On October 13, 1965, KXYZ filed a petition for leave to amend its application with respect to its financial and programing proposals for the purpose of meeting the new financial standard enunciated by the Commission in the Ultravision case, and stated that the material submitted as an amendment would also be offered as hearing exhibits. In its amendment material, KXYZ changed its programing proposal from an independent to a network operation, and specified UBS as the network with which it would be affiliated, predicating its financial estimates on programs to be supplied without charge from the network. KXYZ also proposed to rely on operating revenue, in addition to cash, to establish its financial qualifications. In its comments on the KXYZ petition for leave to amend, the Broadcast Bureau stated that "In fairness, the Broadcast Bureau desires to alert KXYZ that, in our opinion, KXYZ by its amendment has not met the Commission's new financial standard." The Bureau pointed out that "Under the Commission's new financial standard, where an applicant relies upon first year operating revenue to establish its financial qualifications, it must furnish convincing evidence with respect to the basis upon which it arrived at its estimate of first year revenue," and that "This * * * KXYZ has not done."

22. In accepting the amendment, the Examiner stated (FCC 65M–1359, released Oct. 20, 1965) that acceptance of the material as an amendment did not constitute a prejudgment as to the admissibility or evidentiary value of the material as a hearing exhibit, and that it would be well for the parties to give serious consideration to the Bureau's comments and to decide upon what, if any, action is appropriate. At the commencement of the hearing on December 10, 1965, counsel for KXYZ stated that he had some additional material which he proposed to introduce and that "the material is basically intended to be responsive to comments made by the Broadcast Bureau in response to our first amendment of October 13, which in turn was responsive [to] the Commission's Ultravision decision", and that such material represented all of the additional exhibits that KXYZ intended to offer.

23. In sum, it is apparent from the foregoing that during the prehearing stages of this proceeding KXYZ was fully apprised of its burden of proof as the applicant to prove by a "convincing showing" under the new Ultravision standard both the reliability of (a) the underlying factor (the availability of network programing hefe) used in developing its cost and revenue estimates, and (b) the accuracy of the estimates, per se. Indeed, as shown by paragraphs 20 and 21, supra, KXYZ was afforded an opportunity prior to the commencement of the evidentiary hearing to amend its application to meet this new standard, and, in fact, did amend its application both with respect to its financial and programing proposals, predicating its amended financial estimates on a network affiliation rather than its original nonnetwork proposal. Thereafter, certain matters considered to be inadequacies in the KXYZ amended proposal were brought to its attention prior to hearing, and the Examiner urged the parties to give serious consideration to the Bureau's comments and to decide what, if any, action was appropriate. At that time, KXYZ stated that it was submitting all the additional material it intended to offer.

24. We turn now to pertinent aspects of the evidentiary hearing. KXYZ's proposed program schedule consists of approximately 64 percent network commercial programing to be supplied, without cost, to KXYZ by the unestablished network; 18 percent recorded programing; and 15 percent live programing. At the hearing, KXYZ elicited no testimony whatsoever as to the likelihood of effectuation of its network proposal, taking the position that despite the unestablished status of UBS, its network affiliation agreement was no different than an affiliation agreement with a longtime established network, such as NBC, CBS, or ABC.[7] In this connection, it is to be noted that no evidence was presented by KXYZ even concerning the identity of UBS, let alone its ability or capacity to supply the programs comprising KXYZ's programing. KXYZ's witness, Vincent Piano, chairman of the board of UBS, was produced as a witness only because he was requested for cross-examination by Crest. Subsequently, Alvin Feltner, another officer of UBS and sole owner of ADS, was produced at the hearing under subpoena by Crest.

25. It is also of significance to note that the evidence of record concerning

[6] The Panel of the Commission, that first considered the new Ultravision financial standard, stated: "With respect to programing, the evidence should establish a reasonable likelihood of effectuation with the funds allocated and available for this purpose." They also emphasized that: "The goal to be achieved is the commencement of service at the earliest possible time, followed by provision of a continuing service in the public interest. Only realistic estimates of anticipated revenues, operating expenses, and construction costs based on practical proposals, in light of the obstacles which will be faced by the new stations, will establish whether an applicant has a reasonable likelihood of a continuing operation in the public interest." 4 RR 2d at 664–65.

[7] See pars. 5–7, supra.

the question of the availability of UBS (ADS) network programing is replete with colloquies of counsel relating to the scope of permitted inquiry under the Ultravision issue. It is also replete with the objections of KXYZ's counsel to Crest's efforts to examine Mr. Piano on questions concerning the viability of the yet unestablished network, which were sustained by the Hearing Examiner on the basis of the position urged upon him by KXYZ, viz. that a special issue was required for such broad inquiry into the qualifications of a network, per se. Nevertheless, this record is crystal clear that the Hearing Examiner—again in accordance with the position urged upon him by counsel for KXYZ—permitted full exploration of UBS' ability to deliver the specific programs relied upon by KXYZ in its program schedule. See, for example, (a) pages 359, 404, 429 of the transcript, where counsel for KXYZ stated that "the basic question here is the reliance of the applicant upon the availability of the specific programs it has proposed"; (b) page 359 of the transcript, where counsel for KXYZ also stated that it was appropriate to ask "what the programs are" and "whether they are available"; and (c) page 1086 of the transcript where KXYZ's counsel stated what he considered to be the nature of that applicant's own burden of proof, as follows: "We, of course, have a certain burden before the Commission to establish the availability or the reasonsable likelihood of the availability of the programing which we propose." And it is to be also noted that the Examiner ruled, in accordance with the position taken by KXYZ, that it was permissible for Crest to inquire into the specific commitments made by UBS to KXYZ and how UBS proposed to meet those commitments, but that, absent a specific issue, Crest would not be entitled to go into the qualifications of the network organization. (T. 380, 431–32.) Thus, the question of the availability of its proposed programs was recognized by KXYZ throughout the course of the evidentiary hearing, as a legitimate and necessary area of inquiry under the Ultravision standard; nevertheless, KXYZ relied solely upon its network affiliation arrangement as the vital factor underlying its estimates of costs and revenues, and, as its only evidence of the foundation supporting the reliability of those estimates. Obviously, with the network arrangement in the forefront of KXYZ's cost and revenue estimates, those estimates become meaningless unless there is a "convincing showing" that the network proposal to supply program material is reasonably realistic and not fiction. The background, as well as the details of KXYZ's network affiliation arrangement with the unestablished network, as shown by the evidence of record, are detailed below.

26. First, the record discloses that (a) the affiliation agreement, dated October 1, 1965, was transmitted to KXYZ by a letter dated September 29, 1965, on the letterhead of Vic Piano Associates—not UBS, and Vic Piano Associates is an organization engaged in selling national spot advertising and has never engaged in the business of program distribution or syndication; (b) Vic Piano Associates and UBS are under common ownership except with respect to the interest of Alvin Feltner, who has no interest in Vic Piano Associates; (c) Feltner is founder and owner of ADS, UBS's program supplier; (d) UBS was incorporated in August 1965; (e) at that time, KXYZ's application had been designated for hearing on a financial qualification issue, and at that time KXYZ proposed nonnetwork programing; (f) approximately 1 month after the incorporation of UBS and on September 3, 1965, the Board released its order, directing that the Ultravision standard was applicable to the subject proceeding; (g) on October 13, 1965, KXYZ filed its petition to amend its application in light of the Ultravision standard by which it changed its financial and nonnetwork proposal to a financial proposal grounded on an affiliation with the UBS network; (h) all the negotiations leading to the affiliation were conducted between Lester Kamin, KXYZ's president and principal stockholder, and Vic Piano; and (i) all negotiations were conducted "on the phone and by correspondence" and at no time were there, personal, face to face, discussions, Mr. Kamin being impressed with "what Piano had to offer" on the basis of material he received from Mr. Piano's firm "as a mass mailing." (Tr. 667.)

27. Secondly, the record discloses that at the time of the hearing, UBS did have an office in New York, but to the extent that it had any staff, it was in actuality the staff of Vic Piano Associates who were engaged in selling national spot advertising, and not in program distribution.

28. Thirdly, the record discloses that despite the foregoing evidence which establishes that UBS can at best be characterized as an incipient organization looking toward becoming a program supplier, Mr. Piano unqualifiedly testified that UBS could "deliver that schedule [KXYZ's proposed programs] today" (Tr. 408), and that 80–85 percent of KXYZ's network programs were "in the can" and owned by UBS. (Tr. 412.)

29. Finally, the record discloses that in rebuttal, Crest, pursuant to a subpoena, produced Alvin Feltner, who as indicated above is the owner of ADS, and also an officer of UBS. Mr. Feltner testified that UBS is not a network yet, but is "a proposed network, a network in formation"; that while a projection for commencement of operation on August 15, 1966, was made, that projection was based on the assumption that the network would be able by that time to deliver to advertisers a minimum of 18 affiliates in 18 major markets; that ADS has agreed (conditionally) to sell programs to UBS and supply it with a full network schedule of programing; that the programs ADS proposes to supply UBS belong to ADS and to the other suppliers to which ADS has contractual obligations; that UBS does not have title to or ownership of any of the programs; that at the present time, the right of UBS to use the programs is completely dependent on the agreement between ADS and UBS; that the agreement is not now effective, but is contingent upon UBS obtaining affiliation agreements with stations in 18 major markets in the top 100 markets; and that there are not enough stations now committed that are on the air to provide a network.[8]

30. On the basis of Feltner's testimony, there are conditions precedent to the availability of UBS (ADS) programing, and such conditions negate reasonable assurance that UBS has the ability to provide KXYZ with any of its proposed programing. Despite this fact, the record shows that KXYZ did not object to any portion of Feltner's testimony, and that Feltner was not examined by KXYZ; nor did KXYZ offer into evidence the UBS–ADS contract. In this posture of this proceeding after Feltner's testimony, it is evident that the record in this case cannot support conclusions different than those reached by the Examiner that KXYZ had not sustained its burden of proof under the Ultravision standard; and that the totality of the evidence of record does not establish the reasonable likelihood of the availability of the programs relied upon by KXYZ as the foundation of its cost and revenue estimates. In this posture of this case after Feltner's testimony concerning the substance of the contract, the Board further believes that it was incumbent upon KXYZ at the conclusion of Feltner's testimony, to have offered into evidence the UBS–ADS contract if it differed from Feltner's testimony in any material respects. However, this KXYZ did not do. And, in the Board's further view, it is no answer to

[8] Although Piano testified that UBS would supply network programs to KXYZ on a bonus basis, without charge, in the event the network was unable to sell them, the bonus plan, like the so-called network plan, is, of necessity, based upon the supposition of the availability of the programs from ADS. As shown by Feltner's testimony, he, as owner of ADS controls all of these programs; he, as owner of ADS, also controls distribution of the programs from ADS to UBS for redistribution to the station; and he (ADS) is not obligated to make any programs whatsoever available to UBS until the latter has the prescribed number of affiliates. Thus, the Board has attached no significant weight to Piano's testimony concerning the bonus plan or to the decision of the UBS board of directors that they "wanted to supply [ADS] programs [without charge] as long as the network had the financial ability to do so." (Tr. 1781.) Obviously, all of the testimony concerning the bonus plan is entitled to little or no weight under the circumstances here where the record does not establish that KXYZ's supposition on the availability of programs is a reasonably realistic foundation for its estimates. In this connection it is to be noted that the Broadcast Bureau originally gave some weight in its proposed findings of fact to Piano's testimony concerning the bonus plan, but that the Bureau subsequently reconsidered its position in the light of Feltner's testimony, as set forth in par. 29, supra, and stated in its brief that the Broadcast Bureau supports the findings and conclusions made by the Examiner.

KXYZ's disinclination to go forward with its burden of proceeding with the evidence when the record all but cried out for this contract if it differed from Feltner's testimony, to now rely upon an Examiner's ruling[9] prior to Feltner's testimony which foreclosed Crest—not KXYZ which had the burden of proof—from subpoening UBS's contracts with suppliers. Although KXYZ now appears to suggest, inferentially at least, at page 12 of its Brief that it would have placed the UBS–ADS contract in the record had the Examiner ruled in Crest's favor, it is to be noted that (a) Feltner's testimony was presented without objection from KXYZ; (b) KXYZ has in no wise tendered this contract in any of its post-initial decision pleadings; and (c) KXYZ has not offered to show that UBS has any greater ability now to supply its network programs than it did at the time of the hearing.[10]

31. It is apparent from the foregoing that KXYZ knew throughout this proceeding that it had to establish its financial ability; that it had to prove by a "convincing showing" the reliability of its estimates of costs and revenues to support a conclusion of a reasonable likelihood of construction and continuing operation; that it knew that it had to show a reasonable likelihood of the availability of its assumed network programing because its estimates were contingent upon the availability of such programing. But KXYZ chose to rely solely upon a network affiliation arrangement, without offering any evidence of the efficacy of the organization, as the foundation of its cost and revenue estimates, as well as its evidence of the reliability of those estimates. In the Board's view, KXYZ's mere reliance on this affiliation agreement with an unestablished network, particularly in light of the totality of the evidence of record, cannot be deemed as constituting either a realistic foundation for its estimates or a "convincing showing" of the reliability of those estimates. In short, the Board concludes that KXYZ's position relating to its alleged "lack of notice" concerning its burden of proof is completely unsupportable and serves merely to divert attention from the fact that KXYZ was disinclined throughout this proceeding—for reasons best known to itself—to accept the standard of proof of a "convincing showing" required by Ultravision[11] in establishing the reliability of its cost and revenue estimates. Moreover, in standing pat on its network affiliation agreement, unmoved by developments during the evidentiary process, KXYZ has knowingly assumed the risk of nonpersuasion and has completely overlooked the fact that in this, like any other case involving financial qualifications, the Commission is faced with the statutory requirement that it make an affirmative finding of qualification, and in order to do so it must have before it substantial evidence to support such finding. As long ago as 1938 the Commission was faced with a situation where an applicant relied upon its parent network, pursuant to a legally binding contract, for financing essential to the subsidiary's qualification under a standard financial inquiry. The Commission stated:

> • • • [t]he Commission is unable to make a finding that the [parent] Yankee Network is financially capable of fulfilling its legal obligation to the applicant, unless we indulge in broad assumptions and general inferences from the incomplete and confusing evidence submitted by the applicant. That we cannot do. The Commission, in granting an application, is under a duty to make an affirmative finding on the financial qualification of the applicant, and, in doing so, it can only rely on affirmative and satisfactory evidence submitted by the applicant. If the applicant fails in his burden of making such a showing, then the Commission is not able to find him financially qualified. The Colonial Network, Inc., 5 FCC 654, 658 (1938).

32. In reaching these conclusions with respect to KXYZ, the Board has not decided here, nor is it necessary to do so, the questions (a) whether the Examiner erred, based upon the position urged upon him by KXYZ, when he foreclosed Crest—not KXYZ which had the burden of proof[12] from its attempts to explore broader inquiries concerning UBS as a network (par. 25 above) or, indeed (b) whether it was KXYZ's responsibility to do so under the Ultravision standard particularly where, as here, there is such a vital interrelationship of programing to be supplied without cost to the applicant by an unestablished network or program supplier, and estimates of cost, expenses, and revenues. We rest our decision here, as did the Examiner, solely on the fact that KXYZ's showing is grossly deficient on the basis of KXYZ's own counsel's statement that "We, of course, have a certain burden before the Commission to establish the availability of the programming which we propose." (Tr. 1086.)

33. KXYZ has also advanced several arguments challenging the Examiner's initial decision which the Board believes are misinterpretations of what the Examiner actually found and concluded. Thus, for example, KXYZ contends that the Examiner erred in grounding his findings and conclusions on availability of programing because, in essence, this involves the financial qualifications of the network and not the applicant, and is outside the scope of the issues. As shown above in paragraphs 25, 27, and 32, supra, this is inconsistent with KXYZ's own position throughout the course of the evidentiary hearing. KXYZ also argues in this connection that the Examiner, despite his evidentiary rulings, concluded, in effect, in paragraphs 24–25 of his initial decision that UBS has no legal right to furnish its proposed network service, and that it does not have the financial ability to produce and supply programs. An examination of these paragraphs shows that KXYZ's argument is wholly without foundation. The findings in paragraphs 24–25 deal with the availability of programs to KXYZ. In paragraph 24 the Examiner found that "UBS does not itself own or have the rights to any film or tape series"; that "ADS owns or has the right to those film or tape shows proposed by KXYZ which are already in existence"; and that ADS is not required to supply any programs to UBS until UBS has enlisted a minimum of 18 affiliates in the top 100 markets, which it had not done at the time of the hearing. These findings are based on the record testimony of Mr. Feltner, owner of ADS, which, as pointed out above, was received in evidence (a) without objection from KXYZ and (b) without any attempt by KXYZ to proffer the UBS–ADS contract if the contract materially differed from Feltner's testimony. Likewise, in paragraph 25 the Examiner found that UBS owns no facilities; employs no technical personnel, etc. All of these findings are based on evidence of record. It is obvious that the Examiner made no findings or conclusions regarding the financial qualifications of UBS, but found and concluded that KXYZ has not shown that its proposed network programing can reasonably be expected to be available to it to support its cost and revenue estimates.

II. KXYZ's Petition for Leave To Amend Its Application

34. KXYZ on February 24, 1967, filed a petition for leave to amend its application so as to permit consideration of an alternative proposal involving new programing, new revenue estimates and new financing. This amendment was filed eleven months after the record was closed; 8 months after an adverse initial decision; and 2 weeks after oral argument on KXYZ's exceptions to the Examiner's findings and conclusions on its existing proposal which was the subject matter of an extensive hearing. Section 1.522 of the Commission's rules provides that post-designation amendments may be granted only for good cause shown. KXYZ makes no reference to the requirements of this rule, and has failed to allege any good cause for acceptance of

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[9] In a written order denying Crest subpoenas duces tecum (FCC 66M–247 released Feb. 17, 1966) for the UBS supplier contracts; the Examiner stated that: "The foregoing is not intended to suggest whether any modification of the issue would be appropriate or whether KXYZ has met its burden of proof absent further information about Unisphere. Matters relating to enlargement of issues are not in the hands of the Examiner, and questions as to what has or has not been proven will come on before the Examiner at a later stage of the proceeding."

[10] See KXYZ's petition for leave to amend discussed infra at pars. 34–39.

[11] The statutory burden of proof established by law in accordance with sec. 309 of the Communications Act rests on the applicant, and it is the applicant who determines, in light of the issues, what evidence it shall present to meet its burden. As suggested by Crest in its reply (footnote 4) to KXYZ's exceptions "it would be absurd to suppose that if KXYZ had offered such [additional] evidence as part of its direct case, in order to meet its burden of justifying its estimated network revenues, it would have been excluded because of absence of a 'special issue.'" In any event, it is clear that KXYZ did not even attempt to proffer any additional evidence or to secure a ruling from the Examiner on such a proffer; instead, it stood pat on its network agreement, unmoved by developments which occurred at the hearing.

[12] See footnote 11, supra.

the amendment at this stage of the proceeding. The petition is, therefore, subject to summary denial as being in violation of the Commission's rules.

35. In offering its amended programing and financial proposal, KXYZ asserts that the amendment is merely an "alternative" which would be utilized "in the event UBS does not commence operations or in the event the commencement of these operations are delayed substantially." In support of the propriety of this offer, KXYZ contends that the Commission has held that consideration of alternative proposals—one based upon the assumption of network affiliation and one not—is proper and consistent with the processes of the agency, citing WHDH, Inc., 13 RR 507 (1957). The WHDH case is clearly not in point and does not support the offer of an alternative proposal by KXYZ at this stage of the proceeding. In the WHDH case, two of the applicants proposed alternative network and nonnetwork operations at the outset of the hearing and their applications were heard on that basis. A third applicant objected to the receipt in evidence of the alternative proposals. The Commission held that the objection was not well taken and that the Examiner properly made findings based on both schedules. The Commission further stated: "To us, the alternative proposals constitute no more than assurance by the applicants advancing them as to full disclosure of proposed plans and insurance to the applicant should the network situation change during the pendency of the proceeding rendering suspect the ability to effect an affiliation." (WHDH, supra, at p. 565s, footnote 41.) In the instant case, KXYZ did not offer an alternative proposal[13] at the outset of the hearing and did not submit any evidence with respect to such proposal. There were no alternative proposals before the Examiner, as in the WHDH case, on which he could make any findings. Here, KXYZ relied solely on its network proposal throughout the hearing and still continues to rely on that proposal.

36. KXYZ also contends that in WJR, The Goodwill Station, Inc., 16 RR 321 (1958), the Commission held that a change in an applicant's network affiliation, even after a hearing on competing applications for the same television facility, is not significant. KXYZ's reliance on the WJR case is also misplaced. In that case, the Commission held that a permittee could properly modify a network proposal found after hearing to be impractical due to circumstances beyond its control. In this case, KXYZ is not a permittee seeking to modify its network proposal; KXYZ is an applicant seeking to establish its financial qualifications after the close of the hearing record through the introduction of new matter outside the record. KXYZ's further argument that an applicant has no control over the operation of a network with which it may propose affiliation and has no power to compel affiliation with any particular network, is not based on any new development and does not alter the situation in this case at this stage of the proceeding. KXYZ must rest its case for decisional purposes on the basis of the existing record.

37. Adequate opportunities were afforded KXYZ prior to and during the course of the hearing to amend its application and to adduce all available evidence to establish its financial qualifications under the Ultravision standard (see pars. 16–21, supra). It is apparent that KXYZ is now attempting by post-oral argument amendment, to correct its total failure to submit affirmative and satisfactory evidence throughout an entire hearing during which specific evidence was actually introduced by its opponent to rebut a finding of qualification. It is well established that "an applicant cannot be permitted to rest on his showing and then, after an adverse decision, rush in and request the Commission to accept an amendment which would correct a weakness in his case, of which he must have been aware from the time the application was filed." James J. B. Scanlon (KCAT), 9 RR 2d 606, 608 (1967).[14]

38. Although KXYZ contends that the programing being tendered is identical to that which it originally proposed prior to its amendment to a network operation, it is clear that the cost estimates based upon this alternative program schedule and the sources of revenue which would be available to meet these cost estimates, as well as the additional bank financing proposed, are new matters, and none of them, including the program proposal, are matters of record. KXYZ admits that its amendment goes "to the basic issue of the qualifications of KXYZ Television under the standard announced in Ultravision." It is obvious that a consideration of these new matters would require a remand of the case for a rehearing on the very issue on which KXYZ has already been afforded a full and fair hearing. The Commission has repeatedly held that a rehearing will not be granted merely to permit an applicant additional opportunity to present material which has been continuously available, in order to make a better case for grant of its application.[15] Moreover, as already stated in paragraphs 5–10, supra, the Board finds no equities in KXYZ's position and no public interest considerations warranting the extraordinary relief of a sucessive retrial on KXYZ's application.

39. Now that the initial decision has gone against it, KXYZ wants to persuade the Board with a supplemental record. As stated by the court in Colorado Radio Corp., supra, "We cannot allow the [applicant] to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed." It is well settled that "orderliness, expedition, and finality in the adjudicating process" are appropriate considerations in passing on a petition of this nature at this terminal stage of the proceeding. (Cf. Valley Telecasting Co., Inc., supra.) After a careful review of all the relevant factors in this case, the Board finds that KXYZ's post-oral argument petition for leave to amend comes too late in the proceeding without any justification, and that no grounds for a grant of the petition have been shown. Accordingly, the petition will be denied.

III. KXYZ's Motion to Reopen Record as to Crest

40. At the conclusion of oral argument before the Board on February 9, 1967, counsel for KXYZ stated his intention to file a motion on matters not involved in the argument. The motion, filed February 10, relates to Crest's financial qualification.[16] Crest's financial proposal, which does not require reliance on revenue, was largely financed by stockholder commitments totalling $1 million; the largest single commitments were two in the amount of $250,000. One of these commitments, that of Bernard E. Calkins, was dependent in turn upon a loan to Calkins evidenced by a commitment letter from the Medical Center National Bank of Houston promising a loan in the amount of Calkins' subscription, subject to review and possible pledge of stock.[17] Crest, which projected costs of $1,366,215.22, would have only $1,200,000 without the Calkins subscription; this total is $166,215.22 short of the requisite sum.

41. KXYZ's motion to reopen, supported by an affidavit of Lester Kamin, KXYZ's President, states, on the basis

[13] As shown above at par. 21, KXYZ, after the inclusion of the Ultravision issue, chose to modify its proposal from a nonnetwork to a network proposal despite the fact that it could have submitted at that time merely an alternative network proposal. However, if it had then proceeded on the alternative program basis, it would, of necessity, have had to include its costs of nonnetwork programing in its cost estimates, as contrasted with its own chosen method of proceeding by assuming the availability of the network programs, without any costs whatsoever.

[14] See also: Flower City Television Corp., 8 RR 2d 209 (1966); Associated Television Corp., 8 RR 2d 400 (1966); Rhinelander Television Cable Corp., 3 RR 2d 274 (1964); Simon Geller, 25 RR 171 (1963).

[15] See: Central Broadcasting Co., supra; WNOW, Inc., supra; WECK Broadcasting Corp., supra; Louis Adelman, supra.

[16] In addition to the matters discussed herein, KXYZ's motion requests further inquiry into the availability of Crest's site, which KXYZ challenged unsuccessfully at hearing, although no such issue was designated. KXYZ now relies upon the fact that the property is being advertised for sale or lease. However, Crest's opposition pleading attaches an affidavit from the president of the owner corporation stating that "the foregoing premises are still available to Crest Broadcasting Co. upon the same terms and conditions outlined in my letter of Jan. 10, 1966." The Board finds no justification for further inquiry at this time in view of the foregoing facts.

[17] While KXYZ challenged this original commitment at hearing, the letter was standard in form and analogized by the bank's loan officer, in a deposition, to similar letters relied upon by KXYZ; KXYZ's challenge accordingly failed.

of an alleged January 1967 conversation between Lester Kamin, since July 11, 1966, a stockholder in the bank, and Joe H. Hodges, since June 9, 1966, president of the Medical Center National Bank, that the $250,000 line of credit relied upon by Calkins is no longer available and that Calkins was so informed "several months ago." The motion and affidavit further state that Calkins is no longer a director of the bank, as he was at the time of hearing and is shown on Commission records to be. In connection with Calkins' ability to meet his commitment, KXYZ also notes Crest's failure to inform the Commission pursuant to Rule 1.65 that as of June 30, 1966, Calkins' company relinquished its franchise to operate a bus company in Wichita, Kans., one of the two principal business interests held by Calkins at the time of hearing.[18] On the basis of these alleged occurrences and Crest's failure to report them to the Commission, KXYZ requests that the case be remanded for additional evidence under the existing financial issue "and under such additional issues as the Review Board deems appropriate."

42. The Broadcast Bureau supported the KXYZ motion on the grounds that the Calkins loan is essential to Crest's qualification; and that KXYZ's showing is therefore sufficient to warrant further hearing on the availability of the $250,000 loan; whether facts have been concealed or misrepresented in connection therewith; whether Rule 1.65 has been complied with in connection with both the loan and the loss of franchise; and the effect of all the foregoing evidence on Crest's character qualifications. Crest opposed the motion as untimely; alleged that the time of KXYZ's request "border[s] on abuse of the Commission's processes"; and attached an affidavit by Calkins categorically denying the allegations of KXYZ.[19] As to the availability of the original loan, Calkins' affidavit states that in May 1966, the bank changed hands; that he, Calkins, had lunch with Messrs. Watson and Sellers, the new co-chairman of the Board, who specifically stated after "full and complete discussion" that the bank was "fully satisfied with all existing loans and commitments made by the bank [to me] including, specifically, the * * * $250,000 in connection with * * * Crest * * *"; that "there was never any discussion by the Board of Directors or any direction to Mr. Joe Hodges or anyone else to rescind the bank's commitment"; and that affiant has never received any oral or written notice from anyone rescinding said letter.

43. KXYZ's reply, with attached affidavits, places in dispute the allegations of Calkins as to his dealings with the current management of the Medical Center National Bank. An affidavit from co-chairman of the Board, Sellers, contradicts Calkins' statement of the bank's willingness to honor the preexisting loan letter, stating that:

> There was no discussion during this luncheon on the financial condition and financial relation of Mr. Calkins with the Medical Center Bank * * * At no time during this luncheon or subsequently [sic] to this date have I ever had any discussion with Mr. Calkins either direct or indirect in regard to a letter of commitment of Medical Center National Bank in regard to his investing in Crest Broadcasting Co. This is the only time that I have ever lunched with Mr. Calkins.

An affidavit from bank president Joe Hodges (cited in Kamin's affidavit as KXYZ's informant on the matter) is also attached to KXYZ's reply. Hodges swears that "late in 1966 I discussed this matter [of the October 5, 1965, letter of commitment] directly with Mr. Calkins in my office"; that the review clause was discussed; and that "I pointed out to Mr. Calkins that the money market was considerably different compared to October of 1965 and that our feeling was that at this time we should be unable to make such a loan." Hodges further averred the bank in fact does "not intend to make a $250,000 loan to Mr. Calkins." In view of the substantial disparity between Calkins' statements and those made by bank officials to whom his affidavit was shown, KXYZ further suggests that a substantial question is raised as to whether Calkins' affidavit filed with Crest's opposition, contained deliberate and willful misrepresentations.

44. Crest's contention that the Board cannot inquire into the foregoing charges because KXYZ's motion is untimely filed must be rejected because such serious charges which may affect the basic qualifications of Crest must be considered by us irrespective of the untimely manner in which they were brought to our attention. In view of these charges of misconduct and the substantial and material questions of fact that have been raised, we are unable, without further hearing, to make the statutory finding required by section 309 of the Act that a grant of the Crest application would serve the public interest. Accordingly, we are ordering an inquiry into the matter. As previously indicated, issues going to Crest's basic qualifications have been requested. All of these issues are based in whole or in part on allegations as to the availability of Calkins' $250,000. The pleadings before the Board contain directly contradictory sworn statements by Calkins, a Crest principal, and by the bank officers with whom he allegedly dealt. The public interest requires hearing resolution of the question raised.

45. In view of all the foregoing, the Crest application must be remanded for further hearing to determine whether the bank loan commitment to Calkins, upon which not only Calkins' subscription to Crest but also Crest's financial qualifications depend, is still in force. In this connection, questions are also raised as to whether Calkins or both Calkins and Crest have concealed facts from the Commission or have misrepresented facts in pleadings filed with the Commission. The burden of proceeding with the introduction of evidence and the burden of proof on the remand issues are placed on Crest as the party with peculiar knowledge of the facts in issue.

Accordingly, it is ordered, That the petition for leave to amend filed by KXYZ Television, Inc., on February 24, 1967, is denied; that the request for acceptance of response and response of KXYZ Television, Inc., filed March 27, 1967, is dismissed as moot; that the statement of Crest Broadcasting Co. regarding post-oral argument pleadings of KXYZ Television, Inc., filed April 3, 1967, is dismissed; and that the motion to reopen record, remand proceeding and for enlargement of issues, filed February 10, 1967, by KXYZ Television, Inc., is granted to the extent hereinafter indicated; and

It is further ordered, That the application of KXYZ Television, Inc. (File No. BPCT-3220), for construction permit for a new television broadcast station on Channel 26 at Houston, Tex., is severed from this consolidated proceeding and is denied; and

It is further ordered, That the record in this proceeding is reopened; and this proceeding is remanded to the Hearing Examiner for adduction of evidence and issuance of a supplementary initial decision on the following issues:

(1) To determine whether Bernard Calkins has a firm commitment from the Medical Center National Bank for a loan in the amount of $250,000; and whether, in light of the evidence adduced, Calkins has the ability to meet his $250,000 commitment to Crest Broadcasting Co.

(2) To determine whether, in connection with the prosecution of its application, Crest Broadcasting Co. and/or any of its stockholders has concealed from or misrepresented to the Commission any facts relevant to the finances of Bernard Calkins.

(3) To determine whether, in light of the evidence adduced pursuant to the foregoing issues, Crest Broadcasting Co. failed to amend or attempt to amend its application within 30 days after substantial changes were made as required by Rule 1.65.

(4) To determine, in light of the evidence adduced pursuant to Issues (1), (2), and (3), whether Crest Broadcasting Co. has the requisite financial and other qualifications to be a licensee of the Commission.

FEDERAL COMMUNICATIONS COMMISSION,[20]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8595; Filed, July 24, 1967; 8:50 a.m.]

[18] Calkins did notify the Commission of the loss of his Houston bus franchise, his other principal business, at about the time the record closed.

[19] Also attached but not referred to in the pleading is an irrevocable letter of credit from the Capital National Bank of Houston to Calkins in the face amount of $250,000. This letter, which KXYZ alleges in an affidavit filed with its reply, was in fact negotiated and paid for by an unnamed third party, is not properly a part of the record and is in any case irrelevant to the matters before the Board.

[20] Statement of Board Member Sloane, dissenting in part, filed as part of original document.

[Docket Nos. 17517, 17518; FCC 67M-1181]

MISS LOU BROADCASTING CORP. AND ROMAC BATON ROUGE CORP.

Order Following Prehearing Conference

In re applications of Miss Lou Broadcasting Corp., Baton Rouge, La., Docket No. 17517, File No. BPH-5616; Romac Baton Rouge Corp., Baton Rouge, La., Docket No. 17518, File No. BPH-5678; for construction permits.

Pursuant to procedural arrangements made at the prehearing conference held on July 12, 1967: *It is ordered*, That the following schedule will govern the future course of proceedings in this matter:

	Procedure	Date
(a)	Exchange of proposed exhibits regarding consolidated issues (Issues 1 and 2.)	July 21, 1967.
(b)	Hearing on Issues 1 and 2.	Sept. 11, 1967.[1]
(c)	Exchange of proposed exhibits regarding present comparative issue matters.	Oct. 6, 1967.
(d)	Notifications regarding witnesses for cross-examination under present comparative issue.	Oct. 17, 1967.
(e)	Hearing on present comparative issue matters.	Oct. 31, 1967.

[1] No change in original date.

Issued: July 13, 1967.

Released: July 20, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8596; Filed, July 24, 1967; 8:51 a.m.]

[Docket No. 17066; FCC 67M-1185]

MULTIVISION NORTHWEST, INC.

Order Continuing Hearing

In re petition by: Multivision Northwest, Inc., Dalton, Ga., Docket No. 17066, File No. CATV 100-73; for authority pursuant to § 74.1107 to operate CATV system.

The Hearing Examiner having under consideration the informal request for continuance of hearing filed on July 12, 1967, by Multivision Northwest, Inc.;

It appearing, that all parties have consented to immediate consideration and grant of the said request and that action on pleadings now pending before the Commission and on other pleadings to be subsequently filed may substantially affect the evidentiary course of the proceeding;

It is ordered, That the said request for continuance is granted and the hearing herein presently scheduled for July 19, 1967, is continued to October 9, 1967, commencing at 10 a.m. in the offices of the Commission at Washington, D.C.

Issued: July 13, 1967.

Released: July 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8525; Filed, July 24, 1967; 8:45 a.m.]

[Docket No. 17569; FCC 67M-1176]

PEAK AIR CONDITIONER CO.

Order Scheduling Hearing

In the matter of Peak Air Conditioner Co., Chicago, Ill., Docket No. 17569, application for authorization in the citizens radio service.

It is ordered, That James D. Cunningham shall serve as Presiding Officer in the above-entitled proceeding; and that the hearing therein shall be convened in the Offices of the Commission, Washington, D.C., on September 11, 1967, at 10 a.m.

Issued: July 10, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8526; Filed, July 24, 1967; 8:45 a.m.]

[Docket No. 17574; FCC 67-790]

RADIO SAN JUAN, INC. (WRSJ)

Order Designating Application for Hearing on Stated Issues

In re application of Radio San Juan, Inc. (WRSJ), Bayamon, P.R., has: 1560 kc, 250 w, 5 kw-LS, U, request: 1560 kc, 25 kw, 50 kw-LS, DA-2, U, San Juan, P.R., Docket No. 17574, File No. BP-16770, for construction permit.

1. The Commission has before it for consideration the above-captioned and described application for a construction permit to increase power and change station location from Bayamon to San Juan, P.R., and request for waiver of § 73.24(g) of the Commission's rules.

2. According to the data submitted by the applicant, the proposal violates § 73.24(g) of the Commission's rules which section provides that the population within the 1 v/m contour cannot exceed 1 percent of the population within the 25 mv/m contour. The applicant's data indicates that the population within the proposed daytime 1 v/m contour is 18,861 or 2.62 percent of the population included within the proposed daytime 25 mv/m contour (719,567). Regarding the proposed nighttime operation, the population within the 1 v/m contour is 9,253 or 1.46 percent of that within the proposed nighttime 25 mv/m contour (633,211).

3. In the applicant's request for waiver of the foregoing section of the Commission's rules, no reasons are given to justify such an action. Accordingly, the application must be set for hearing to determine whether circumstances exist which would warrant a waiver of that section of the rules.

4. The applicant proposes to utilize the present antenna site and construct one additional tower to be utilized for the proposed two-tower directional operation. The present site does not appear to be adequate to accommodate the proposed directional antenna system in that the restricted plot of land results in severe curtailment in the length of the ground radials proposed. The ground system around the north tower is essentially restricted to a 30-foot by 30-foot ground screen over a large arc, and the other antenna tower would have the radials restricted to a length of only 73 feet in some directions. Furthermore, there are antenna towers and other structures located within the proposed 1 v/m contour which may adversely affect the proposed operation. Accordingly, an issue is included to determine whether the site is satisfactory for the proposed directional operation.

5. In addition, calculations made by the Commission reveal that minor variations in the operating parameters for the proposed nighttime operation would cause the proposed MEOV's to be exceeded. Accordingly, we must conclude that a substantial question obtains as to whether the antenna system can be adjusted and maintained as proposed, and an appropriate hearing issue is included in this regard.

6. The proposed nighttime radiation parameters do not appear to accurately depict values of radiation in the null areas which would be determined from the proposed directional antenna parameters. Therefore, a hearing issue in this regard is included.

7. A grant of this proposal would bring the tenth local standard broadcast outlet to San Juan while leaving only one station licensed to serve Bayamon, a city with a population of 15,109. This fact we believe, raises a substantial and material question as to whether a grant would result in a fair, efficient, and equitable distribution of facilities within the meaning of section 307(b) of the Communications Act of 1934, as amended. Accordingly, an issue with respect thereto will be included. See WKYR, Inc., 24 RR 1097 (1963).

8. Except as indicated below, the applicant is qualified to construct, own and operate as proposed; however, in view of the foregoing, the Commission is unable to make the statutory finding that a grant of the application would serve the public interest, convenience, and necessity and is of the opinion that it must be designated for hearing on the issues set forth below.

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the application is designated for hearing at a time and place

to be specified in a subsequent Order, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the proposed operation of Station WRSJ and the availability of other primary service to such areas and populations.

2. To determine whether the proposal of Radio San Juan is in compliance with § 73.24(g) of the Commission's rules concerning population within the 1000 mv/m contour, and, if not, whether circumstances exist which would warrant a waiver of said section.

3. To determine whether the present site is satisfactory for the proposed directional antenna system.

4. To determine whether the directional antenna system can be adjusted and maintained within the maximum expected operating values of radiation as proposed.

5. To determine whether the proposed nighttime radiation pattern is in agreement with values of radiation which would be determined from the proposed directional antenna parameters.

6. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, whether a grant of the application would provide a fair, efficient, and equitable distribution of radio service.

7. To determine, in the light of the evidence adduced pursuant to the foregoing issues, whether a grant of the application would serve the public interest, convenience, and necessity.

It is further ordered, That in the event of a grant of the application, the construction permit shall contain the following conditions:

1. Submission by the permittee of data made in accordance with §§ 73.48 and 2.579 of the rules for type-acceptance of the proposed transmitter for 25 kilowatts.

2. Pending a final decision in Docket No. 14419 with respect to presunrise operation with daytime facilities, the present provisions of § 73.87 of the Commission rules are not extended to this authorization, and such operation is precluded.

It is further ordered, That to avail itself of the opportunity to be heard, the applicant, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicant herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: July 5, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8527; Filed, July 24, 1967; 8:45 a.m.]

[Docket No. 17574; FCC 67M-1195]

RADIO SAN JUAN, INC. (WRSJ)

Order Scheduling Hearing

In re application of Radio San Juan, Inc. (WRSJ), Bayamon, P.R., Docket No. 17574, File No. BP-16770; for construction permit.

It is ordered, That David I. Kraushaar shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on October 23, 1967, at 10 a.m.; and that a prehearing conference shall be held on September 18, 1967, commencing at 9 a.m.: *And, it is further ordered,* That all proceedings shall take place in the Offices of the Commission, Washington, D.C.

Issued: July 10, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8528; Filed, July 24, 1967; 8:45 a.m.]

[Docket No. 17005; FCC 67M-1182]

ROMAC BATON ROUGE CORP.

Order Rescheduling Procedural Dates

In re application of Romac Baton Rouge Corp., Baton Rouge, La., Docket No. 17005, File No. BPCT-3725, for construction permit for new television broadcast station.

By previous order of the Examiner (FCC 67M-1096) released June 30, 1967, the hearing on the qualifications issues added by the Review Board was scheduled for August 3 and the exchange of applicant's proposed exhibits re these issues was scheduled for July 13, 1967, subject to revision of such dates if found unacceptable to counsel for the applicant in Docket No. 17517 whose interest in these issues arises from their consolidation for hearing at one time both for the purposes of the instant proceeding and of a separate proceeding involving Docket Nos. 17517 and 17518. However, in a prehearing conference held on July 12, 1967, in the proceeding involving the last-mentioned dockets it became evident that the hearing date of August 3 was no longer suitable under the circumstances of the consolidation. Accordingly, the hearing date on these issues as well as the exchange date were rescheduled to meet the new situation.

Pursuant to the rescheduling arrangements made at the July 12 prehearing conference: *It is ordered,* That the hearing in the above-captioned proceeding is rescheduled from August 3 to September 11, 1967, and the date for exchange of exhibits re the consolidated issues is rescheduled from July 13 to July 21, 1967.

Issued: July 13, 1967.

Released: July 20, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8597; Filed, July 24, 1967; 8:51 a.m.]

[Docket No. 17209; FCC 67R-288]

SALTER BROADCASTING CO. (WBEL) ET AL.

Memorandum Opinion and Order Enlarging Issues

In re applications of Salter Broadcasting Co. (WBEL) et al., South Beloit, Ill., Docket No. 17209, 17210, 17211, 17212, 17213, 17214, 17215, 17217, 17219, File No. BMP-11646; for construction permits.

1. The Review Board has before it for consideration a motion to enlarge issues, filed March 13, 1967, by Victory Broadcasting Co., Inc. (Victory), seeking addition of two engineering issues and a specialized programing issue.[1] Victory is one of the several applicants in this proceeding which seeks authorization to construct a new standard broadcast station to operate on the frequency 1380 kc/s in St. Louis, Mo. The mutually exclusive application of Salter Broadcasting Co. (Salter) looks toward improvement of its existing Station, WBEL, in South Beloit, Ill. By memorandum opinion and order, FCC 67-225, released February 21, 1967, the competing applications were designated for consolidated hearing.

ENGINEERING ISSUES

2. Victory's request for engineering issues is directed to the seven St. Louis applicants proposing to use the transmitter site presently being utilized by Radio Thirteen-Eighty, Inc. (RTEI), which was granted interim authority to operate the facility made vacant as a result

[1] The following pleadings are also before the Board: Opposition, filed Apr. 12, 1967, by the Broadcast Bureau; joint opposition, filed Apr. 13, 1967, by Archway Broadcasting Corp. (Archway), Home State Broadcasting Corp. (Home State), St. Louis Broadcasting Co. (St. Louis Broadcasting), Six-Eighty-Eight Broadcasting Co. (Six-Eighty-Eight) and Prudential Broadcasting Co. (Prudential); response, filed Apr. 13, 1967, by Archway; reply to Bureau's opposition re programing, filed Apr. 24, 1967, by Victory; and reply to opposition of Bureau and other applicants re engineering, filed Apr. 25, 1967, by Victory.

of the license revocation of former Station KWK.[2] The requested issues would inquire (a) whether the proposal of any of the applicants will create prohibited overlap with any existing station (§ 73.37) and, if so, whether a preference should be given to applicants whose proposals would not create such overlap, and (b) whether there are any structures in the vicinity of RTEI interim site which would cause distortion in the radiation pattern. In designating the captioned applications for hearing the Commission recognized that operating as proposed, certain of the applicants would cause interference to several existing stations. However, since these existing stations would not be required to accept more interference than they had been required to accept from former Station KWK, the Commission declined to "reexamine old interference matters long since decided solely because we revoked the KWK license * * *."

3. In brief, it now appears to be Victory's position that the proof-of-performance measurements for the RTEI operation show that because of the parasitic problem (electrical interaction) between the tower used by RTEI and the old KWK tower array,[3] RTEI's nondirectional daytime pattern has marked directional characteristics, and that since this parasitic problem is beyond the control of the applicants herein, no truly nondirectional operation can be expected at the RTEI site. According to Victory, as a result of this pattern distortion the proposals of those applicants specifying the RTEI site will involve: (a) New prohibited overlap between their respective 2 mv/m contours and the 25 mv/m contour of Station KJCF (1400 kc/s), Festus, Missouri; (b) an increase in the prohibited overlap which existed between the 0.025 mv/m contour of former Station KWK and the existing 0.5 mv/m contours of Stations KCII (1380 kc/s), Washington, Iowa, and WWCM (1380 kc/s), Brazil, Ind.; (c) a change in the prohibited overlap which existed between former Station KWK and the 0.5 mv/m contour of Stations KUDL (1380 kc/s), Fairway, Kans., and WMTA (1380 kc/s), Central City, Ky.; and (d) a continuation of the prohibited overlap which existed between the 0.5 mv/m contour of former Station KWK and the 0.5 mv/m contour of WPRC (1370 kc/s). To the extent applicants would cause new or increased interference (as contrasted to a restoration of interference caused by former Station KWK) Victory contends inquiry should be made into the question of whether waiver of Rule 73.37 is warranted. To the extent no new or increased interference is involved, Victory contends a comparative inquiry is required to determine whether its proposal (which allegedly would not cause interference to the same degree as former Station KWK or those applicants specifying the RTEI site) should be preferred as representing a more efficient use of the frequency.

4. Answering Victory's contention that the measurements from RTEI's proof-of-performance taken with the conductivities from the Figure M–3 map establish overlap between the proposed 2 mv/m contours of the applicants specifying the RTEI site and the 25 mv/m contour of Station KJCF, the Broadcast Bureau states that the two RTEI proof-of-performance radials relied upon by Victory extend to distances of only 13 to 17 miles and straddle the 25 mv/m contour of KJCF. Moreover the Bureau contends that Victory failed to analyze more pertinent measurements which were made to ascertain whether the 2 mv/m contour of former Station KWK would overlap the KJCF 25 mv/m contour and which measurements indicate no such overlap occurred. As to the alleged overlap with Stations WPRC, KCII, WWCM, KUDL, and WMTA, the Bureau maintains that, although the RTEI daytime radiation pattern shows departure from circularity, a comparison of the pattern with former Station KWK's proof-of-performance pattern shows that the radiation from RTEI's single tower is less than that of old KWK in all directions except two—to the south and southwest, and that the five stations referred to by Victory lie within an arc from west-northwest clockwise to south-east where RTEI's radiation is less than that of former Station KWK. Thus, it is the Bureau's position that, at the very least, any preexisting overlap would be reduced, if not eliminated entirely.

5. In their joint opposition, Archway, Home State, St. Louis Broadcasting, Six-Eighty-Eight and Prudential argue that the Commission has already determined not to reexamine the old interference problems involved in the operation of former Station KWK; that the reexamination sought by Victory in the guise of a comparative inquiry would be contrary to the Commission's determination; and that in any event, Victory has failed to allege specific factual allegations to support its motion. According to the engineering statement submitted in support of the joint opposition, RTEI's Director of Engineering was employed to repeat the radial measurements made along the azimuths of 187° T and 210° T shown in RTEI's application and to extend these radials toward KJCF to determine the location of RTEI's 2 mv/m contour. According to the statement, these measurements show a decrease in the inverse distance field along the 187° T radial from 710 mv/m at one mile to 635 mv/m at one mile, but that for the first 13 miles the soil conductivity is identical to that measured during RTEI's proof-of-performance. Assuming the initial radiation were to exist, it is claimed that RTEI's 2 mv/m contour would be extended two miles toward KJCF but that it would not overlap the latter station's 25 mv/m contour at any point. The joint opposition concedes that the parasitic problem caused by the old KWK array does cause some distortion of RTEI's daytime pattern but argues that in the event KWK Broadcasting Corp. (the only applicant specifying the old KWK site) does not receive the contested construction permit, its related company (owner of the site) will sell the property in which case it is reasonable to assume the towers will be removed and sold for salvage.[4]

6. Victory's reply pleading attacks the reliability of the measurement data submitted with the joint opposition and notes that although the inverse distance field on 187° T radial decreased in value, the inverse distance field on the 210° T radial is purported to be the same as shown in the RTEI proof-of-performance. According to Victory this factor casts doubt upon the reliability of the measurements taken along the 210° T radial.

7. The requested issues will not be added. As pointed out by the Bureau, RTEI's daytime radiation pattern is less than that of former Station KWK in the direction of the five stations located west-northwest clockwise to the southeast of St. Louis, so that the prohibited overlap of contours with these stations will not be increased from that which previously existed during the operation of former Station KWK. As noted earlier, Victory's allegation of 2–25 mv/m overlap with Station KJCF is based on its analysis of the measurements made by other parties on RTEI's interim operation. However, the Board questions the validity of Victory's analysis of the measurements made along the 187° T radial. As a means of locating RTEI's 2 mv/m contour, Victory indicated by a "dashed line" its determinations of the average of the measurements made between 21 and 48 miles. In this determination there are three measurements located above the average lines and eight measurements below the line. Further, in locating its average line, Victory ignored other measurements taken closer to the transmitter site which should be considered in the averaging process and which would indicate that the location of the 2 mv/m contour would not extend as far as claimed. Victory also ignored the measurements taken on the 210° radial of the interim operation but which did not enhance its position. The Board finds that the allegations relied upon by Victory are insufficient to support its contention that a proposed station operating from the RTEI interim site would involve overlap of prohibited contours with Station KJCF. The foregoing is dispositive of Victory's claim that the proposals of those applicants specifying the RTEI site will cause new, increased or changed interference. However, there remains the question of a comparative

[2] Originally only five of the eight surviving St. Louis applicants (Archway, Home State, St. Louis Broadcasting, Six-Eighty-Eight, and Prudential) specified the site now being used by RTEI; subsequently, Great River Broadcasting, Inc., and Missouri Broadcasting, Inc., amended their proposals to specify the interim site. Since each of the seven proposes to use power of 5 kw during its daytime operation, there would be no significant difference in the proposed daytime coverage of these applicants.

[3] The site of the RTEI interim operation is located approximately 0.2 mile east of the old KWK site.

[4] Subsequent to the filing of Victory's motion, the application of KWK Broadcasting Corp. was dismissed by the Hearing Examiner. FCC 67M–654, released Apr. 20, 1967.

evaluation between those seven applicants which would allegedly restore the interference previously caused by former Station KWK, and Victory, which by specifying a different site would allegedly cause less interference. The Commission in its Policy Statement on Comparative Broadcasting Hearings, 1 FCC 2d 393, 5 RR 2d 1901 (1965), stated that in comparative cases where one or two or more of the competing applicants proposes an operation which for one or more engineering reasons would be more efficient, this fact can and should be considered in determining which of the applicants should be preferred. Accordingly, to the extent such alleged differences exist between Victory's proposal and those of the other seven St. Louis applicants, they may be explored under the designated contingent standard comparative issue (Issue 16).

PROGRAMING ISSUE

8. Victory's request for a programing issue is, in reality, a request for an issue to permit comparison between the need for its program proposal, which is allegedly designed to "consciously cater to the needs and interests of the Negro population of St. Louis," and the need for the alleged general broadcast format proposed by the remaining St. Louis applicants. In support of its request, Victory alleges that the bulk of its principals are Negroes;[1] that it conducted a survey of public needs which included contacts with civic leaders, leaders of the Negro community of St. Louis, and "people in all walks of life"; that the other St. Louis applicants appear to be proposing a "'general' music and news format * * * of which there are a plethora of similar services in St. Louis already"; and that it will be the only Negro-owned station in St. Louis and will cater to the needs and interests of the 30 percent nonwhite population of that city.

9. Primary opposition to Victory's request for a programing issue comes from the Broadcast Bureau, which contends that Victory made no attempt to show that substantial differences exist between the St. Louis proposals, and that it likewise made no attempt to "tie its proposed programing to its survey." In short, the Bureau argues that Victory has failed to meet the test necessary for addition of a comparative programing issue as announced by the Commission in Chapman Radio & Television Co., 7 FCC 2d 213, 9 RR 2d 635 (1967).

10. Replying to the Bureau's objections Victory contends (a) that the fact it intends to cater to the needs of the Negro community is in and of itself a significant difference between the competing proposals; (b) that its ascertainment of community needs established a lack of adequate programs aimed at the real interests of the Negro community in such areas as community affairs, Negro culture and history, current events, and the problems of civil rights; and (c) that its program proposal is designed to meet these unfulfilled needs. In support of this latter contention Victory invites examination of its program schedule and points to such representative programs as "Community Forum," a one-half hour discussion program broadcast on Sunday, in which community leaders—especially from the Negro community—will discuss problems of common interest; "Citizenship Panel," a one-half hour program in which representatives of the police department will join members of the community in discussing the rights and responsibilities of good citizenship; a quarter-hour program devoted to news and commentary on NAACP affairs; "Church Bulletin Board," listing services and activities of churches in the Negro community; "School Report," a program related to activities in schools located in the Negro community; and a one-half hour weekly discussion program centering on Negro history.

11. Victory's allegation that the remaining St. Louis applicants do not propose programing specifically directed toward the substantial nonwhite population has not been contradicted or challenged by any party in this proceeding. The fact that Victory does propose such a format constitutes an apparent substantial difference between the applicants. See SRC, Inc., FCC 67–739, released June 28, 1967; Ward L. Jones, FCC 67–82, released January 25, 1967. This difference, which reflects Victory's ascertainment of community needs and interests, together with its showing as to the manner in which it would meet such needs warrant the addition of an issue to determine, on a comparative basis, whether a greater need exists in St. Louis for Victory's specialized-service or for a general-service station. See Policy Statement on Comparative Broadcasting Hearings, supra. It should be noted that the issue being added herein does not contemplate the adduction of evidence relating to a comparison of the specific programing proposals of the remaining seven St. Louis applicants, but only such evidence as may be necessary to compare the needs of St. Louis for Victory's service as against a service which would not be specifically directed toward any particular group or segment of the population. Compare Jones T. Sudbury, FCC 67–614, released May 31, 1967.

Accordingly, it is ordered, That the motion to enlarge issues, filed March 13, 1967, by Victory Broadcasting Co., Inc., is granted to the extent indicated below and is denied in all other respects; and

It is further ordered, That the issues in this proceeding are enlarged to including the following:

To determine, on a comparative basis, whether a greater need exists in St. Louis, Mo., for the specialized program service proposed by Victory Broadcasting Co., Inc., or for a general-service broadcast station.

Adopted: July 10, 1967.

Released: July 17, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67–8529; Filed, July 24, 1967; 8:46 a.m.]

[Docket No. 17561; FCC 67M–1194]

SANFORD SCHAFITZ

Order Continuing Prehearing Conference

In re application of Sanford Schafitz, Farrell, Pa., Docket No. 17561, File No. BPH–5281; for construction permit.

It is ordered, That the prehearing conference in the above-entitled proceeding is hereby continued from July 18 to July 26, 1967, and will be held in the Offices of the Commission, Washington, D.C., commencing at 9 a.m., on the date indicated.

Issued: July 17, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67–8530; Filed, July 24, 1967; 8:46 a.m.]

[Docket No. 14368, etc.; FCC 67M–1200]

SYRACUSE TELEVISION, INC., ET AL.

Order Continuing Hearing

In re applications of: Syracuse Television, Inc., Syracuse, N.Y., Docket No. 14368, File No. BPCT–2924; W. R. G. Baker Radio & Television Corp., Syracuse, N.Y., Docket No. 14369, File No. BPCT–2930; Onondaga, Broadcasting, Inc., Syracuse, N.Y., Docket No. 14370, File No. BPCT–2931; Wage, Inc., Syracuse, N.Y., Docket No. 14371, File No. BPCT–2932; Syracuse Civic Television Association, Inc., Syracuse, N.Y., Docket No. 14372, File No. BPCT–2933; Six Nations Television Corp., Syracuse, N.Y., Docket No. 14444, File No. BPCT–2957; Salt City Broadcasting Corp., Syracuse, N.Y., Docket No. 14445, File No. BPCT–2958; George P. Hollingbery, Syracuse, N.Y., Docket No. 14445, File No. BPCT–2968; for construction permits for new television broadcast stations.

The Hearing Examiner has for consideration a motion, filed July 14, 1967, on behalf of all the parties to the above-entitled proceeding, including the Commission's Broadcast Bureau, which motion was incorrectly addressed to the Chief Hearing Examiner. The motion asks for "continuance and suspension of all proceedings until August 3, 1967 for the purpose of, within that time, filing an application for approval of a proposed merger agreement to which all parties will be parties signatory." In support thereof, the parties represent that as of

[1] According to Victory, its President, Mr. Clifton Gates, is the president and founder of the first Negro bank in St. Louis, and its vice president is Negro broadcaster, Dr. Haley Bell.

July 13 their authorized representatives "have notified Bruce G. Sundlun, Esq., of their agreement to the terms of the merger and it is expected that a written agreement can be drafted, signed and submitted" by August 3. In granting the relief requested herein the Hearing Examiner hereby advises the parties that, in the event the agreement and supporting petition are not filed with the Commission by the close of business, Thursday, August 3, he will, on his own motion, reschedule the hearing to convene at an early date, by which all parties are to be prepared to go forward.

Accordingly, it is ordered, That the "Motion for Continuance within which to file Application for Approval of Merger Agreement," filed July 14, 1967, on behalf of all the parties to the above-entitled proceeding, is hereby granted, and the hearing, presently scheduled to convene on July 19 is hereby continued without date.

Issued: July 17, 1967.

Released: July 20, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8598; Filed, July 24, 1967; 8:51 a.m.]

[Docket Nos. 17577, 17578; FCC 67M-1197]

WATERMAN BROADCASTING CORPORATION OF TEXAS AND NATIONAL ENTERPRISES, INC.

Order Scheduling Hearing

In re applications of Waterman Broadcasting Corp. of Texas, San Antonio, Tex., Docket No. 17577, File No. BPH-5484; National Enterprises, Inc., Alamo Heights, Tex., Docket No. 17578, File No. BPH-5491; for construction permits.

It is ordered, That Basil P. Cooper shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on October 13, 1967, at 10 a.m.; and that a prehearing conference shall be held on September 15, 1967, commencing at 9 a.m.: *And it is further ordered,* That all proceedings shall take place in the offices of the Commission, Washington, D.C.

Issued: July 11, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8531; Filed, July 24, 1967; 8:46 a.m.]

[Docket Nos. 17579, 17580; FCC 67-793]

WRBN, INC., AND TRI-COUNTY BROADCASTING CO., INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In re applications of WRBN, Inc., Warner Robins, Ga., requests: 101.7 mc, No. 269; 3 kw (horizontal) 3 kw (vertical); 207 feet, Docket No. 17579, File No. BPH-5703; Tri-County Broadcasting Co., Inc., Hawkinsville, Ga., requests: 101.7 mc, No. 269; 3 kw; 244 feet, Docket No. 17580, File No. BPH-5737; for construction permits.

1. The Commission has under consideration the above captioned and described applications which are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. The respective proposals, which are for different communities, would serve substantially different areas and populations. Consequently, it will be necessary to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

3. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations within the 1 mv/m contour together with the availability of other FM services of 1 mv/m or greater intensity in such areas will be considered under the 307(b) issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

4. According to its application, WRBN, Inc., would require $29,880 to construct and operate for 1 year without revenue. To meet this requirement, WRBN, Inc., is relying on cash of $3,236 and a bank loan of $25,000, for a total of $28,236. Accordingly, we will specify an issue to determine whether the additional $1,654 required for construction and initial operation is available.

5. Except as indicated below, the applicants are qualified to construct and operate as proposed. However, because of their mutual exclusivity, the Commission is unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity, as is of the opinion that the applications must be designated for hearing on the issues set forth below.

It is ordered, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether WRBN, Inc., has available to it the additional $1,654 required to construct and operate for 1 year without revenue and thus demonstrate its financial qualifications.

2. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if either, of the applications should be granted.

It is further ordered, That to avail themselves of the opportunity to be be heard, the applicants, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney shall, within twenty (20) days of the mailing of this order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That the applicants herein shall, pursuant to section 311 (a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: July 5, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8532; Filed, July 24, 1967; 8:46 a.m.]

[Docket Nos. 17579, 17580; FCC 67M-1196]

WRBN, INC., AND TRI-COUNTY BROADCASTING CO., INC.

Order Scheduling Hearing

In re applications of WRBN, Inc., Warner Robins, Ga., Docket No. 17579, File No. BPH-5703; Tri-County Broadcasting Co., Inc., Hawkinsville, Ga., Docket No. 17580, File No. BPH-5737; for construction permits.

It is ordered, That Elizabeth C. Smith shall serve as Presiding Officer in the above-entitled proceeding; that the hearings therein shall be convened on October 11, 1967, at 10 a.m.; and that a prehearing conference shall be held on September 19, 1967, commencing at 9 a.m.: *And it is further ordered,* That all proceedings shall take place in the offices of the Commission, Washington, D.C.

Issued: July 11, 1967.

Released: July 18, 1967.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 67-8533; Filed, July 24, 1967; 8:46 a.m.]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 609]

BRIDGETTS & CO., INC.

Order To Show Cause

On June 27, 1967, the Federal Insurance Co. notified the Commission that

the surety bond filed pursuant to section 44(c), Shipping Act, 1916 (46 U.S.C. 841(b)) by Bridgetts & Co., Inc., 27 Pearl Street, New York, N.Y. 10004, would be canceled effective July 28, 1967.

Section 44(c) of the Shipping Act, 1916 (46 U.S.C. 841(b)) and § 510.5(f) of General Order 4 (46 CFR part 510) provide that no license shall remain in force unless such forwarder shall have furnished a bond.

Section 44(d) of the Shipping Act, 1916 (46 U.S.C. 841(b)) provides that licenses may, after notice and hearing, be suspended or revoked for willful failure to comply with any provision of the Act, or with any lawful rule of the Commission promulgated thereunder.

Now, therefore, by virtue of authority vested in me by the Federal Maritime Commission, as set forth in Manual of Orders, Commission Order 201.1 (revised) section 6.03.

It is ordered, That Bridgetts & Co., Inc., on or before July 24, 1967, either (1) submit a valid bond effective on or before July 28, 1967, or (2) show cause in writing or request a hearing to be held at 10 a.m. on July 25, 1967, in room 505 Federal Maritime Commission, 1321 H Street NW., Washington, D.C. 20573, to show cause why its license should not be suspended or revoked pursuant to section 44(d), Shipping Act, 1916.

It is further ordered, That License No. 609 be forthwith revoked if the licensee fails to comply with this order.

It is further ordered, That a copy of this order to show cause and all subsequent orders in this matter be served upon the licensee and be published in the FEDERAL REGISTER.

JAMES E. MAZURE,
Director,
Bureau of Domestic Regulation.

[F.R. Doc. 67-8539; Filed, July 24, 1967; 8:46 a.m.]

[Independent Ocean Freight Forwarder License No. 1047]

CARLO INTERNATIONAL & CO.

Order To Show Cause

On June 28, 1967, the New Hampshire Insurance Co. notified the Commission that the surety bond filed pursuant to section 44(c), Shipping Act, 1916 (46 U.S.C. 841(b)) by George Carlo, doing business as Carlo International & Co., Port Everglades Station, Fort Lauderdale, Fla. 33316, would be canceled effective July 29, 1967.

Section 44(c) of the Shipping Act, 1916 (46 U.S.C. 841(b)) and § 510.5(f) of General Order 4 (46 CFR Part 510) provide that no license shall remain in force unless such forwarder shall have furnished a bond.

Section 44(d) of the Shipping Act, 1916 (46 U.S.C. 841(b)) provides that licenses may, after notice and hearing, be suspended or revoked for willful failure to comply with any provision of the Act, or with any lawful rule of the Commission promulgated thereunder.

Now, therefore, by virtue of authority vested in me by the Federal Maritime Commission, as set forth in Manual of Orders, Commission Order 201.1 (revised) section 6.03.

It is ordered, That George Carlo, doing business as Carlo International & Co. on or before July 24, 1967, either (1) submit a valid bond effective on or before July 29, 1967, or (2) show cause in writing or request a hearing to be held at 10 a.m. on July 27, 1967, in Room 505, Federal Maritime Commission, 1321 H Street NW., Washington, D.C. 20573, to show cause why its license should not be suspended or revoked pursuant to section 44(d), Shipping Act, 1916.

It is further ordered, That License No. 1047 be forthwith revoked if the licensee fails to comply with this order.

It is further ordered, That a copy of this order to show cause and all subsequent orders in this matter be served upon the licensee and be published in the FEDERAL REGISTER.

JAMES E. MAZURE,
Director,
Bureau of Domestic Regulation.

[F.R. Doc. 67-8540; Filed, July 24, 1967; 8:46 a.m.]

FEDERAL RESERVE SYSTEM

SOUTHEAST BANCORPORATION, INC.

Notice of Application for Approval of Acquisition of Shares of Banks

Notice is hereby given that application has been made to the Board of Governors of the Federal Reserve System pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)), by Southeast Bancorporation, Inc., Miami, Fla., for prior approval of the Board of action whereby Applicant would become a bank holding company through the acquisition of all of the voting shares (less directors' qualifying shares) of the First National Bank of Miami, Miami, Fla., and Coral Way National Bank, Miami, Fla., and 80 percent or more of the voting shares of Curtiss National Bank of Miami Springs, Miami Springs, Fla.

Section 3(c) of the Act, as amended, provides that the Board shall not approve (1) any acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or (2) any other proposed acquisition or merger or consolidation under this section whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than fifteen (15) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Dated at Washington, D.C., this 18th day of July 1967.

By order of the Board of Governors.

[SEAL] MERRITT SHERMAN,
Secretary.

[F.R. Doc. 67-8541; Filed, July 24, 1967; 8:46 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ACTING DEPUTY ASSISTANT REGIONAL ADMINISTRATOR FOR RENEWAL ASSISTANCE; ACTING DIRECTOR, FIELD SERVICE DIVISION; ACTING CHIEF, REHABILITATION LOAN AND GRANT BRANCH; REGION IV (CHICAGO)

Designation

During the present vacancies in the positions of Acting Deputy Assistant Regional Administrator for Renewal Assistance; Director, Field Service Division; and Chief, Rehabilitation Loan and Grant Branch, Region IV (Chicago), the following individuals are designated to serve as acting in the positions as indicated below, with all the powers, functions, and duties redelegated or assigned to those positions:

1. Thomas S. Kilbride, Acting Deputy Assistant Regional Administrator for Renewal Assistance.
2. Richard A. Kaiser, Acting Director, Field Service Division, Renewal Assistance Office.
3. Martin Segal, Acting Chief, Rehabilitation Loan and Grant Branch, Renewal Assistance Office.

(Secretary's delegation effective Nov. 16, 1966)

Effective as of the 14th day of June 1967.

LEWIS E. WILLIAMS,
Deputy Assistant Secretary for Administration.

[F.R. Doc. 67-8564; Filed, July 24, 1967; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[812-2143]

AMERICAN HYDROCARBON CORP.

Notice of Filing of Application for Order Extending Period of Exemption From Provisions of the Act

JULY 18, 1967.

Notice is hereby given that American Hydrocarbon Corp. ("Applicant") 111 Braniff Building, Dallas, Tex. 75235, a Delaware corporation, has filed an application pursuant to section 3(b) (2) of the Investment Company Act of 1940 ("Act") for an order of the Commission extending the period during which Applicant is exempt from all provisions of the Act applicable to investment companies for an additional 60 days beginning June 27, 1967, or such additional period of time as the Commission deems applicable or appropriate in the circumstances. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

On April 27, 1967, Applicant filed an application pursuant to section 3(b) (2) of the Act for an order of the Commission declaring it to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities through a controlled company or companies.

Section 3(b) (2) of the Act provides that the filing of an application by an issuer other than a registered investment company shall exempt an applicant for a period of sixty days from all provisions of the Act applicable to investment companies as such. It also provides that for cause shown, the Commission by order may extend the period of exemption for an additional period or periods.

Applicant now requests a temporary order pursuant to section 3(b) (2) of the Act exempting it from all provisions of the Act for an additional period of sixty days beginning June 27, 1967, or such additional period of time as the Commission deems applicable or appropriate in the circumstances, in order to file additional material relevant to the application filed by Applicant under section 3(b) (2).

Notice is further given that any interested person may, not later than August 8, 1967, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the Company at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-8555; Filed, July 24, 1967; 8:48 a.m.]

[811-418]

CALIFORNIA PACIFIC TRADING CORP.

Notice of Filing of Application for Order Declaring Company Has Ceased To Be an Investment Company

JULY 18, 1967.

Notice is hereby given that California Pacific Trading Corp. ("applicant"), c/o Fleischmann & Farber, 593 Market Street, Suite 1020, San Francisco, Calif. 94105, a Delaware corporation and a closed-end nondiversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 8(f) of the Act for an order declaring that applicant has ceased to be an investment company as defined in the Act. The Superior Court of the State of California, in and for the city and county of San Francisco has found, among other things, that all the known debts and liabilities of applicant have been paid of adequately provided for; that the known assets of applicant have been distributed to applicant's preferred shareholders or in the case of unlocated preferred shareholders, to have been deposited with the Treasurer of the State of California; and has issued an order declaring applicant has been duly wound up and dissolved. All interested persons are referred to the application on file with the Commission for a statement of applicant's representations.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 9, 1967, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the matter may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon this matter shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-8556; Filed, July 24, 1967; 8:48 a.m.]

[70-4507]

GEORGIA POWER CO.

Notice of Proposed Issue and Sale of First Mortgage Bonds and Preferred Stock at Competitive Bidding

JULY 19, 1967.

Notice is hereby given that Georgia Power Co. ("Georgia"), 270 Peachtree Street, Atlanta, Ga. 30303, an exempt holding company and an electric utility subsidiary company of the Southern Co., a registered holding company, has filed an application with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transactions.

Georgia proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $60 million principal amount of first mortgage bonds, ____ percent series due 1997. The interest rate of the bonds (which will be a multiple of one-eighth of 1 percent) and the price, exclusive of accrued interest, to be paid to Georgia (which will be not less than 99 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive

bidding. The bonds will be issued under an indenture dated as of March 1, 1941, between Georgia and Chemical Bank New York Trust Co., successor trustee, as heretofore supplemented and as to be further supplemented by a supplemental indenture to be dated as of September 1, 1967.

Georgia also proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, 120,000 shares of its cumulative preferred stock, without par value. The dividend rate of the preferred stock (which will be a multiple of 4 cents) and the price to be paid to Georgia (which will be not less than $100 nor more than $102.75 per share) will be determined by the competitive bidding. Georgia's charter will be amended to allow for and to establish the terms of the preferred stock.

The proceeds from the issuance and sale of the bonds and preferred stock will be applied by Georgia, together with funds available from other sources, to finance its 1967 construction program (presently estimated at $123,190,000, to reimburse its treasury for the retirement of previously outstanding bonds, and to pay short-term bank loans.

The issuance and sale of the bonds and the preferred stock have been expressly authorized by the Georgia Public Service Commission, the State commission of the State in which Georgia is organized and doing business. The application states that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. Estimates of fees and expenses to be incurred in connection with the proposed transactions are to be filed by amendment.

Notice is further given that any interested person may, not later than August 14, 1967, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-8557; Filed, July 24, 1967; 8:48 a.m.]

[No. 1-464]

JADE OIL & GAS CO.

Order Suspending Trading

JULY 18, 1967.

The 50 cents par value common stock and the 6½ percent convertible subordinated debentures due January 1, 1979, with or without warrants attached, listed and registered on the Pacific Coast Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Jade Oil & Gas Co., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such Exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the Pacific Coast Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period July 19, 1967, through July 28, 1967, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-8558; Filed, July 24, 1967; 8:48 a.m.]

[70-4509]

WEST PENN POWER CO.

Notice of Proposed Charter Amendments

JULY 19, 1967.

Notice is hereby given that West Penn Power Co. ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pa. 15601, an exempt holding company and an electric utility subsidiary company of Allegheny Power System, Inc. ("Allegheny"), a registered holding company, has filed a declaration with this Commission, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6, 7, and 12(e) of the Act and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

West Penn proposes to amend its charter to reclassify 24,923 shares of its authorized but unissued 4½ percent preferred stock, $100 par value per share, to 24,923 shares of preferred stock of like par value, without designation as to series. It is also proposed to amend the charter in order to comply in all respects with the requirements of this Commission's statement of policy regarding preferred stock issued by companies subject to the Act, as prescribed in Holding Company Act Release No. 13106. These proposed amendments relate, among other things, to (1) a change in the amounts payable to the preferred stockholders upon voluntary liquidation; (2) restrictions on the payment of dividends on common stock and the acquisition of preferred stock; (3) rights of preferred stockholders with respect to election of directors; (4) the rights of preferred stockholders in the event of a merger, or sale of assets; and (5) restrictions on the issuance of additional unsecured debt and preferred stock.

West Penn has outstanding 397,077 shares of preferred stock, $100 par value, held by the public, and 3,774,086 shares of common stock, held by Allegheny. Each share of common and preferred stock entitles its holder to one vote with respect to the proposed charter amendments. The declaration states that under the provisions of the Pennsylvania business corporation law and West Penn's charter, the affirmative vote of the holders of at least a majority of all outstanding shares of common and preferred stocks, voting together as one class, will be required to adopt the proposed amendment with respect to the reclassification of the 4½ percent preferred stock. The affirmative vote of the holders of at least two-thirds of all outstanding shares of preferred stock, voting separately as a class, will be required to adopt the other proposed amendments. The declaration further states that Allegheny will vote in favor of the proposed amendments and that dissenters have no appraisal or similar rights.

West Penn intends to submit the proposed amendments to its stockholders for approval at a special stockholders meeting to be held on September 18, 1967. In connection with the amendments, other than that relating to the reclassification, West Penn proposes to solicit proxies from the holders of its outstanding preferred stock through the use of solicitation material, which sets forth the proposed amendments in detail.

It is stated that registration by the Pennsylvania Public Utility Commission of a securities certificate is required to effect the proposed amendments, and that an appropriate order of that commission will be filed by amendment. It is further stated that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees, commission, and expenses in connection with the proposed transactions are estimated at $11,500, including the cost of proxy solicitation and legal fees of $5,500 and $3,000, respectively.

Notice is further given that any interested person may, not later than August 4, 1967, request in writing that a hearing be held with respect to the proposed amendments of the charter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he

desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F.R. Doc. 67-8559; Filed, July 24, 1967; 8:48 a.m.]

INTERSTATE COMMERCE COMMISSION

[General Emergency Transport Order 1-67]

PREFERENCE AND PRIORITY FOR THE TRANSPORTATION OF PASSENGERS AND FREIGHT NECESSARY TO THE NATIONAL DEFENSE, HEALTH, AND SAFETY

Vacation of Order

Present: William H. Tucker, Chairman, to whom the matter which is the subject of this order has been assigned for action.

Upon consideration of the record, and of the resumption of normal rail transportation:

It is ordered, That General Emergency Transport Order 1-67 issued July 16, 1967, be, and it is hereby, vacated and set aside.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission, Washington, D.C., and by filing a copy thereof with the Director, Office of the Federal Register.

Dated at Washington, D.C., this 19th day of July 1967.

By the Commission, Chairman Tucker.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-8604; Filed, July 24, 1967; 8:51 a.m.]

[Notice 10]

MOTOR CARRIER TRANSFER PROCEEDINGS

JULY 20, 1967.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 279), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-69643. By order of July 18, 1967, the Transfer Board approved the transfer to Allen Storage Warehouse Co., a corporation, Portland, Maine, of certificate No. MC-111652, issued May 3, 1956, to M. G. Morisette & Sons, Inc., Waterville, Maine, and authorizing the transportation of: Household goods, between Waterville, Maine, and points in Maine within 40 miles thereof, on the one hand, and, on the other, points in New Hampshire, Massachusetts, Vermont, Rhode Island, Connecticut, New Jersey, New York, and Pennsylvania, and used household goods, used office furniture and fixtures, and used museum and hospital equipment, between points in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. Jerome G. Daviau, 50 Main Street, Waterville, Maine 04901, attorney for applicants.

No. MC-FC-69764. By order of July 18, 1967, the Transfer Board approved the transfer to G. E. Groger Truck Line, Inc., Walton, Ky., of the operating rights in certificate No. MC-48573, issued August 27, 1959, to the Vogt Warehouse Corp., a corporation, Cincinnati, Ohio, authorizing the transportation of: General commodities, with the usual exceptions, between Cincinnati, Ohio, on the one hand, and, on the other, specified points in Indiana, Ohio, and Kentucky. Robert H. Kinker, 711 McClure Building, Frankfort, Ky. 40601, attorney for applicants.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-8606; Filed, July 24, 1967; 8:51 a.m.]

[Section 5a Application No. 64; Amdt. 3]

STEEL CARRIERS' TARIFF ASSOCIATION, INC.

Application for Approval of Amendment to Agreement

JULY 21, 1967.

The Commission is in receipt of a section 5a application in the above-entitled proceeding for approval of an amendment to the agreement therein approved.

Filed May 22, 1967 by James R. Stiverson, Herbert Baker, 50 West Broad Street, Columbus, Ohio 43215.

The amendment involves: Change in the agreement so as to (1) revise quorum requirements for annual and special membership meetings; (2) expand by 30 States the territorial scope of activities; (3) provide public notice to interested persons or docket proposals on a subscription basis in lieu of publication in "Transport Topic"; and (4) revise member voting procedures governing emergency proposals.

The application may be inspected at the office of the Commission in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved without public hearing.

[SEAL] H. NEIL GARSON, *Secretary.*

[F.R. Doc. 67-8607; Filed, July 24, 1967; 8:51 a.m.]

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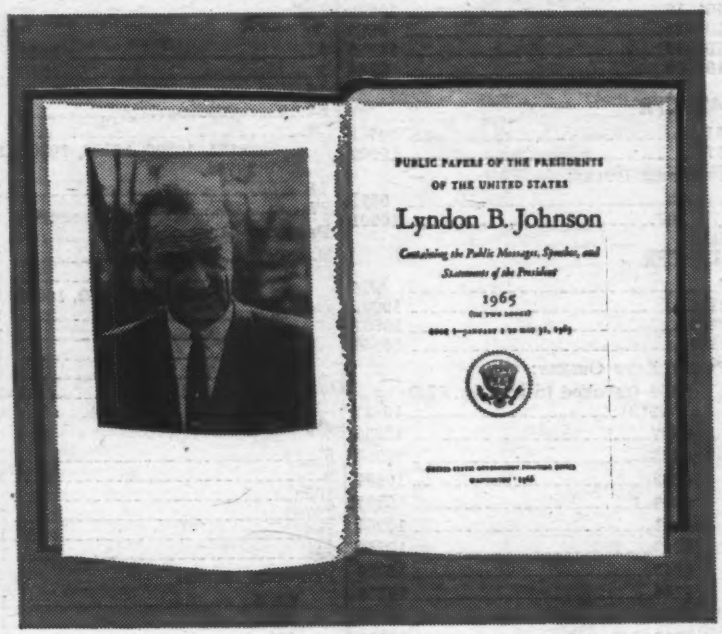

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